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# Federal Register

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## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

### 8 CFR Part 274a

**[CIS No. 2441–08; Docket No. USCIS–2008–0001]**

**RIN 1615–AB69**

### Documents Acceptable for Employment Eligibility Verification; Correction

**AGENCY:** U.S. Citizenship and Immigration Services, DHS.

**ACTION:** Interim rule; correction.

**SUMMARY:** On December 17, 2008, the Department of Homeland Security (DHS) published an interim rule in the **Federal Register** amending its regulations governing the types of acceptable identity and employment authorization documents and receipts for completion of the Form I–9, Employment Eligibility Verification. On February 3, 2009, USCIS delayed the effective date of the interim rule until April 3, 2009. On February 23, 2009, DHS published a final rule that amended the same section of the Code of Federal Regulations (CFR) as the interim rule, resulting in an inadvertent error in the interim rule's amendatory language. This document corrects that inadvertent error.

**DATES:** *Effective Date:* This correction is effective April 3, 2009.

**FOR FURTHER INFORMATION CONTACT:** Stephen McHale, Verification Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 470 L'Enfant Plaza East, SW., Suite 8001, Washington, DC 20529–2600, telephone (888) 464–4218 or e-mail at *Everify@dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

**Need for Correction**

On December 17, 2008, DHS published an interim rule in the **Federal Register** at 73 FR 76505. The interim rule amended 8 CFR 274a.2 by revising paragraph (b)(1)(v)(A).

On February 3, 2009, DHS published a document in the **Federal Register** at 74 FR 5899, delaying the effective date of the December 17th interim rule until April 3, 2009, and extending the comment period until March 4, 2009. This extension was necessary to allow for further review and consideration of the interim rule by DHS officials.

On February 23, 2009, DHS published a final rule in the **Federal Register** at 74 FR 7993, providing for employer-specific employment authorization for certain aliens lawfully enlisted in the U.S. Armed Forces. The final rule became effective on February 23, 2009, and amended 8 CFR 274a.2 by:

- Adding and reserving paragraph (b)(1)(v)(A)(*6*) and by
- Adding paragraph (b)(1)(v)(A)(*7*).

Since the December 17th interim rule becomes effective after the February 23rd final rule, the amendatory language revising 8 CFR 274a.2(b)(1)(v)(A) in the interim rule would inadvertently remove the new paragraph (b)(1)(v)(A)(7) of the final rule. This correction will fix that inadvertent error.

**Correction of Publication**

■ Accordingly, the publication on December 17, 2008 (73 FR 76505) of the interim rule that was the subject of FR Doc. E8–29874 is corrected as follows:

## PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

**§ 274a.2 [Corrected]**

■ 1. On page 76511, in the first column, instruction 2d should be revised to read: ''Revising paragraphs (b)(1)(v)(A)(*1*) through (*5*), and adding paragraph (b)(1)(v)(A)(*6*);''

■ 2. On page 76511, in the first column, add an instruction immediately after instruction 2d to read: ''Paragraph (b)(1)(v)(A) is further amended by removing the period at the end of paragraph (b)(1)(v)(A)(6) and adding a ''; '' in its place.

Dated: March 5, 2009.

**Michael Aytes,**

*Acting Deputy Director, U.S. Citizenship and Immigration Services.*

[FR Doc. E9–5164 Filed 3–10–09; 8:45 am]

**BILLING CODE 9111–97–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2008–1319; Directorate Identifier 2008–CE–071–AD; Amendment 39–15836; AD 2009–05–12]**

**RIN 2120–AA64**

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

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

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Cessna Aircraft Company (Cessna) Models 208 and 208B airplanes. This AD requires you to modify the aileron carry-through cable attachment to the aileron upper quadrant with parts of improved design. This AD results from reports of a ''catch'' in the aileron control system when the control yoke is turned. We are issuing this AD to prevent the cable attach fitting on the aileron upper quadrant assembly from rotating and possibly contacting or interfering with the aileron lower quadrant assembly, which could result in limited roll control and reduced handling capabilities.

**DATES:** This AD becomes effective on April 15, 2009.

On April 15, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

**ADDRESSES:** For service information identified in this AD, contact Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; telephone: (800) 423–7762 or (316) 517–6056; Internet: *http://www.cessna.com.*

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington,

DC 20590, or on the Internet at *http://www.regulations.gov*. The docket number is FAA–2008–1319; Directorate Identifier 2008–CE–071–AD.

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

**SUPPLEMENTARY INFORMATION:**

**Discussion**

On December 12, 2008, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Models 208 and 208B airplanes.This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 18, 2008 (73 FR 76979). The NPRM proposed to require you to modify the aileron carry-through cable attachment to the aileron upper quadrant with parts of improved design.

**Comments**

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

**Conclusion**

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

**Costs of Compliance**

We estimate that this AD affects 794 airplanes in the U.S. registry.

We estimate the following costs to do the modification:

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 2 work-hours × $80 per hour = $160 | Not applicable | $160 | $127,040 |

We estimate the following costs to do any necessary repairs and replacements that will be required based on doing the modification. We have no way of determining the number of airplanes that may need these repairs or replacements.

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| .5 work-hour × $80 per hour = $40 | Not applicable | $40 |

We estimate the following costs to do possible damage repair to the aileron lower quadrant assembly, if necessary:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 2 work-hours × $80 per hour = $160 | Not applicable | $160 |

We estimate the following costs to do possible removal and installation of the aileron lower quadrant assembly, if necessary:

| Labor cost | Parts cost | Total cost per airplane |
|---|---|---|
| 16 work-hours × $80 per hour = $1,280 | Not applicable | $1,280 |

We estimate the following costs to do possible removal and installation of the headliner, if necessary:

Warranty credit will be given for parts and labor to the extent specified in the manufacturer's service bulletin.

**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 AD.

**Regulatory Findings**

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2008–1319; Directorate Identifier 2008–CE–071–AD'' in your request.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2009–05–12 Cessna Aircraft Company:** Amendment 39–15836; Docket No. FAA–2008–1319; Directorate Identifier 2008–CE–071–AD.

**Effective Date**

(a) This AD becomes effective on April 15, 2009.

**Affected ADs**

(b) None.

**Applicability**

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

| Model | Serial Nos. |
|---|---|
| 208 ..... | 20800001 through 20800415 and 20800417 through 20800419. |
| 208B ..... | 208B0001 through 208B1081, 208B1083 through 208B1215, 208B1217 through 208B1257, 208B1259 through 208B1305, 208B1307, and 208B1309 through 208B1310. |

**Unsafe Condition**

(d) This AD results from reports of a ''catch'' in the aileron control system when the control yoke is turned. We are issuing this AD to prevent the cable attach fitting on the aileron upper quadrant assembly from rotating and possibly contacting or interfering with the aileron lower quadrant assembly, which could result in limited roll control and reduced handling capabilities.

**Compliance**

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

| Actions | Compliance | Procedures |
|---|---|---|
| Modify the aileron carry-through cable attachment to the aileron upper quadrant with parts of improved design. | Within the next 100 hours time-in-service after April 15, 2009 (the effective date of this AD) or within the next 6 months after April 15, 2009 (the effective date of this AD), whichever occurs first. | Follow the Accomplishment Instructions in Cessna Caravan Service Bulletin CAB08–6, dated October 27, 2008. |

**Alternative Methods of Compliance (AMOCs)**

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ann Johnson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4105; fax: 316–946–4107; e-mail address: *ann.johnson@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

**Material Incorporated by Reference**

(g) You must use Cessna Caravan Service Bulletin CAB08–6, dated October 27, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Cessna Aircraft Company, P.O. Box 7704, Wichita, Kansas 67277; telephone: (800) 423–7762 or (316) 517–6056; Internet: *http://www.cessna.com.*

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

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

Issued in Kansas City, Missouri, on February 27, 2009.

**John Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E9–4828 Filed 3–10–09; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–1318; Directorate Identifier 2008–NM–155–AD; Amendment 39–15848; AD 2009–06–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

**ACTION:** Final rule.

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

an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * * *

The Bombardier CL–600–2B19 airplanes have had a history of flap failures at various positions for several years. Flap failure may result in a significant increase in required landing distances and higher fuel consumption than planned during a diversion. * * *

* * * * *

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

**DATES:** This AD becomes effective April 15, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of April 15, 2009.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of September 5, 2007 (72 FR 46555, August 21, 2007).

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

**FOR FURTHER INFORMATION CONTACT:** Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:**

## Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 18, 2008 (73 FR 76974) and proposed to supersede AD 2008–01–04, Amendment 39–15329 (73 FR 1964, January 11, 2008). That NPRM proposed to correct an unsafe condition for the specified products.

That NPRM proposed to retain the requirements of AD 2008–01–04, *i.e.*, revising the airplane flight manual (AFM) to incorporate a temporary revision (TR) into the AFM, adding operational procedures into the AFM, training flight crewmembers and operational control/dispatch personnel on the operational procedures, and doing corrective maintenance actions. The corrective maintenance actions include a pressure test of the flexible drive-shaft and corrective actions, and a low temperature torque test of the flap actuators and corrective actions.

That NPRM also proposed to add repetitive low temperature torque tests of the flap actuators and corrective actions. In addition, that NPRM proposed to require revising the AFM to incorporate a new TR (adding maximum flaps operating speed data and clarifying maximum flaps extended speeds), and to modify the Operational Limitations. That NPRM also proposed to require revising the annual simulator training for ''Flap Zero Landing'' events and revising the previously required training for flight crewmembers and operational control/dispatch personnel on the operational procedures.

Further, the NPRM proposed to require certain maintenance actions following a flap fail event and installation of a cockpit placard that specifies new flap operating limitations. That NPRM also proposed to allow installing modified flap actuators, which would terminate certain sections of the operational procedures.

## Comments

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

### Request To Revise Wording in Paragraph (h)(6) of the NPRM

Mesa Group requests that we revise the wording in paragraph (h)(6) of the NPRM. The commenter points out that paragraph (h)(6) of the NPRM specifies to do maintenance actions ''except if maintenance actions cannot be done and normal flap system operation can be restored after an on-ground circuit breaker reset operation, then continued revenue operation is permitted without further maintenance action for up to 10 flight cycles * * *.'' The commenter states the descriptions of the actions in paragraphs (h)(6)(i) and (h)(6)(ii) of the NPRM—*i.e.*, to ''do the maintenance actions specified in paragraph (h)(6) of the AD''—create a ''loop'' and jeopardize safety of flight because operators can continue flight indefinitely as long as the airplane lands where maintenance actions cannot be done.

We disagree with the commenter's assertion that the actions proposed in paragraphs (h)(6)(i) and (h)(6)(ii) of the NPRM create a loop. Paragraph (h)(6) of this AD provides an exception to doing the maintenance actions before further flight on airplanes on which a flap fail message occurs. The exception allows flight without further maintenance action for up to 10 flight cycles subject to certain operating limitations and after an on-ground circuit breaker reset operation, except as provided by the actions described in paragraphs (h)(6)(i) and (h)(6)(ii) of this AD.

Paragraph (h)(6)(i) of this AD limits the allowable flight cycles by specifying that the maintenance actions specified in paragraph (h)(6) of this AD must be done within 10 flight cycles following the initial on-ground circuit breaker reset operation. Paragraph (h)(6)(ii) of this AD also limits the allowable flight cycles by specifying that if another flap fail event occurs any time after the initial circuit breaker reset operation, then the maintenance actions specified in paragraph (h)(6) of this AD must be done before further flight.

Once operators have done the on-ground circuit breaker reset operation, the maintenance actions must be done within the compliance time specified in paragraph (h)(6)(i) or (h)(6)(ii) of this AD, depending on whether another flap fail event occurs. Paragraphs (h)(6)(i) and (h)(6)(ii) of this AD do not allow any exceptions to the specified compliance times. However, for clarity, we have revised paragraphs (h)(6)(i) and (h)(6)(ii) to refer to the service information instead of paragraph (h)(6) of this AD.

### Request To Revise or Supersede AD 2006–12–21

Comair requests that we revise or supersede AD 2006–12–21, amendment 39–14647 (71 FR 34793, June 16, 2006), to add a statement indicating that the installation of the actuators called out in paragraph (h)(5) of the NPRM is acceptable for compliance with paragraph (h) of AD 2006–12–21. The commenter notes that in paragraph (i) of the NPRM we include such a statement, but there will still be no cross reference within AD 2006–12–21 itself.

We do not agree that it is necessary to revise or supersede AD 2006–12–21. The intent of paragraph (i) of this AD is simply to specify that installing certain flap actuators provides a method of compliance with paragraph (h) of AD 2006–12–21. In addition, a global alternative method of compliance (AMOC) to AD 2006–12–21 was granted to Bombardier on November 18, 2008, which allowed installation of actuator part numbers (P/Ns) 601R93103–23/24 (Vendor P/N 853D100–23/24) in lieu of P/Ns 601R93103–19/20 (Vendor P/Ns 853D100–19/20) as a way to comply with paragraph (h) of AD 2006–12–21. The AMOC also allows installation of actuator P/Ns 601R93104–23/24 (Vendor P/N 854D100–23/24) in lieu of P/Ns 601R93104–19/20 (Vendor P/N 854D100–19/20) as a way to comply with paragraph (h) of AD 2006–12–21.

We have not changed this AD in this regard.

**Request To Revise AFM Reference**

Comair and Air Wisconsin request that we revise an AFM reference in the quoted material of paragraph (h)(2) of the NPRM from ''AFM TR/165'' to ''AFM TR RJ/165–1.'' Both commenters request that we revise the AFM reference in Note 1 following ''paragraph 1.'' of the quoted material. Comair also requests that we revise the AFM reference in the Note following ''paragraph 2.'' of the quoted material.

We agree to revise the AFM reference because AFM TR RJ/165–1 is the latest AFM TR. We have revised the notes within the quoted material in paragraph (h)(2) of this AD accordingly.

**Request To Remove Training Requirement**

Two commenters, Comair and Air Wisconsin, request that we remove training requirements from the NPRM. Comair states that paragraphs (f)(3), (g)(1), and (h)(3) of the NPRM contain training requirements and that an AD is not the proper mechanism to mandate training. Comair states that 14 CFR 39.3 defines airworthiness directives as ''* * * legally enforceable rules that apply to the following products: aircraft, aircraft engines, propellers, and appliances.'' Comair further states that these paragraphs requiring training are issued against people and not against a product. Air Wisconsin also states that paragraphs (g)(1), (h)(3)(i), and (h)(3)(ii) of the NPRM do not belong in the AD because those paragraphs apply to flight crewmembers and operational control/dispatch personnel.

We disagree with the request to remove training requirements. Section 39.11 of the Federal Aviation Regulations (14 CFR 39.11) describes the types of actions that ADs can require, including ''conditions and limitations you must comply with.'' While we agree that section 39.3 of the Federal Aviation Regulations (14 CFR 39.3) applies to the products listed in 14 CFR 39.11, we retain broad authority to require any corrective action that is determined to be most effective in addressing an identified unsafe condition on any of the products listed in 14 CFR 39.3.

In this AD, we have found that one of the factors contributing to the identified unsafe condition is lack of flightcrew training in operating an airplane when a flap failure occurs in flight (such as in freezing conditions). Due to the unsafe condition, we determined that these training requirements, in conjunction with the other requirements of this AD, are necessary for safe operation of the airplane. We have not revised this AD in this regard.

**Request To Clarify Requirements in Paragraphs (g)(3)(i) and (g)(3)(ii) of the NPRM**

Comair requests that we clarify the requirements specified in paragraphs (g)(3)(i) and (g)(3)(ii) of the NPRM. Comair states that in recent years it seems to have become common practice when an AD is superseded by another AD that the old requirements are restated as they appeared in the superseded AD. Paragraphs (g)(3)(i) and (g)(3)(ii) of AD 2008–01–04 refer to ''2,000 flight hours.'' Paragraphs (g)(3)(i) and (g)(3)(ii) of this NPRM now list ''5,000 flight cycles.'' Comair states that if there is a new requirement, for consistency, it should fall under paragraph (h) of the NPRM.

Comair is correct in observing that we generally restate the requirements of the existing AD in the new AD. We restate the requirements as a necessity when the requirements of the existing AD continue in the new AD or when certain requirements of the new AD are tied to accomplishment of an action or actions in the existing AD, and as a courtesy to operators for their reference. When there are compliance changes to the actions in the existing AD, we may keep the actions in the restatement section; thus, we restated paragraph (g)(3) of this AD with a change to the accumulated time on the actuators.

In this case, we have extended the accumulated time on the actuators that are affected by paragraph (g)(3) of this AD. We explained this in the Discussion section of the NPRM as follows:

> This proposed AD also re-identifies the airplanes affected by paragraph (g)(3) of the existing AD. The accumulated time on the actuators specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD has been extended from ''2,000 flight hours'' to ''5,000 flight cycles.''

The re-identification does not affect airplanes that have already complied with the actions specified in paragraph (g)(3) of this AD and is relieving for airplanes that have not yet complied with the actions specified in paragraph (g)(3) of this AD. No change has been made to paragraph (g)(3) of this AD.

**Request To Clarify Requirements of Paragraphs (g)(3) and (h)(4) of the NPRM**

Air Wisconsin requests that we clarify the requirements of paragraphs (g)(3) and (h)(4) of the NPRM. Air Wisconsin states that paragraphs (g)(3)(i) and (g)(3)(ii) of the NPRM and paragraphs (h)(4)(i) and (h)(4)(ii) of the NPRM are confusing because they seem to duplicate each other. Air Wisconsin suggests that paragraphs (h)(4)(i) and (h)(4)(ii) be removed and that we refer to paragraphs (g)(3)(i) and (g)(3)(ii) instead in paragraph (h)(4) of the NPRM.

Air Wisconsin further requests that we clarify whether paragraphs (g)(3) and (h)(4) of the NPRM apply to actuators that had the pinion shaft seals replaced since February 15, 2008, and have fewer than 5,000 flight cycles since replacement. In addition, Air Wisconsin also requests that we clarify whether paragraphs (g)(3) and (h)(4) of the NPRM do not apply to actuators that are overhauled or that had the pinion shaft seals replaced.

We agree that the requirements of paragraphs (g)(3) and (h)(4) should be clarified. Paragraph (g)(3) of this AD applies to airplanes that have actuators (identified in paragraph (g)(3) of this AD) that meet the conditions of either paragraph (g)(3)(i) or (g)(3)(ii) of this AD. Once an actuator accumulates more than 5,000 flight cycles since new, or a repaired actuator accumulates more than 5,000 flight cycles on the pinion shaft seals, operators must do the low-temperature torque test specified in paragraph (g)(3) of this AD. If an actuator has 5,000 or fewer flight cycles since new, or if an actuator that has been repaired has 5,000 or fewer flight cycles since pinion shaft seal replacement, then paragraph (g)(3) of this AD does not apply to that actuator. Therefore, paragraph (g)(3) of this AD also does not apply to overhauled actuators with 5,000 or fewer flight cycles since the pinion shaft seals have been replaced.

The intent of paragraph (h)(4) of this AD is to require repetitive low temperature torque tests to be done for actuators having more than 5,000 flight cycles, and on repaired actuators having more than 5,000 flight cycles on the pinion shaft seals.

If the actuators are replaced with new actuators having 5,000 flight cycles or fewer, or with repaired actuators having 5,000 flight cycles or fewer on the pinion shaft seals, then the repetitive torque tests are terminated.

However, the replaced actuators will be affected by the requirements of paragraph (g)(3) of this AD once the new actuator accumulates more than 5,000 flight cycles since new, or the repaired actuator accumulates more than 5,000 flight cycles on the pinion shaft seals; once these actuators are required to have the low temperature torque test specified in paragraph (g)(3) of this AD, these actuators will be affected by the requirements of paragraph (h)(4) of this AD if they pass the torque test (i.e., the actuators that do not need to be

replaced). We have revised paragraph (h)(4) of this AD to clarify these requirements and removed paragraphs (h)(4)(i) and (h)(4)(ii) of this AD.

**Request To Revise Language in the Quoted Material in Paragraph (h)(2) of the NPRM**

Several commenters request that we revise specific language in the section titled ''4. Dispatch Following a Flap Failed Event'' of the quoted material in paragraph (h)(2) of the NPRM:

• Comair requests that we clarify the listing for conditions a., b., c., and d. specified in paragraph 4. of the quoted material.

We agree to clarify the listing for conditions a., b., c., and d. specified in paragraph 4. of the quoted material. We have determined that the current wording is not clear in specifying that conditions ''a. and b., and either c. or d.,'' must be met. Therefore, we have revised the wording in the section titled ''4. Dispatch Following a Flap Failed Event'' of the quoted material in paragraph (h)(2) of this AD as follows:

''If normal flap system operation can be restored after an on-ground system reset, continued revenue operation of that airplane is permitted, provided conditions a. and b., and either c. or d., below are satisfied: * * *.''

• Air Wisconsin and Pinnacle Airlines request that we clarify that the maintenance technician/personnel or flight crewmember can accomplish the operational check specified in paragraph 4.b. of the quoted material.

We agree with the request to clarify paragraph 4.b. of the quoted material. The flightcrew has the responsibility for verifying the operability of the systems called out in paragraph 4.b. of the quoted material. We have revised paragraph 4.b. of the quoted material in paragraph (h)(2) of this AD to read:

''Prior to each flight following an on-ground circuit breaker reset, the thrust reversers, ground spoilers, and brake system are verified operational by the flightcrew.''

• Comair requests that we clarify that there is no requirement to document the results of the flightcrew system tests, and suggests adding the following statement to paragraph 4. of the quoted material: ''Note: No maintenance log entry is required for the following action.''

We disagree with the commenter's request. There must be operator-controlled documentation that accounts for the 10-flight-cycle limitation following the initial reset of a circuit breaker. The method of documentation is up to the discretion of the operator and the principal operations inspector (POI). We have not revised this AD in this regard.

• Comair also requests that we add the following statement to paragraph 4. of the quoted material: ''Until a maintenance action can be performed as specified by (h)(3)(6), for each flight following an on-ground circuit breaker reset, either condition a. or b. [landing distance available], below, must be satisfied: * * *.''

We disagree with the request to add the statement. We find that the language suggested by the commenter provides no substantive change from the meaning of the paragraph as it is written in the NPRM, and that no clarity would be added with such a change. We have not revised this AD in this regard.

• Air Wisconsin and PSA Airlines request that the action specified in paragraph 4.b. of the quoted material in paragraph (h)(2) of the NPRM be revised to clarify what needs to be accomplished and what is expected. Air Wisconsin states that the type of check should be specified. PSA Airlines suggests that the word ''verify'' be removed. Comair also requests that we clarify paragraph 4.b. by specifying ''For each flight following an on-ground circuit breaker reset, prior to take-off, the following checks [thrust reversers, ground spoilers, and brake system] must be performed: * * *.'' In addition, Comair requests that additional information on the operational checks be provided.

We clarify that paragraph 4.b. of the quoted material in paragraph (h)(2) of this AD is intended to apply to all operators. Individual operators have the option of using more restrictive language. We find no need to revise this AD in this regard.

• Pinnacle Airlines requests that we clarify who must perform the on-ground circuit breaker reset. Pinnacle Airlines infers that the flightcrew does the reset.

We clarify that the following wording in paragraph (h)(6) of this AD makes it apparent the flightcrew performs the reset: ''* * * the circuit breaker reset operation can be performed by the flightcrew when authorized by the operator's maintenance control organization.'' We have not revised this AD in this regard.

• Pinnacle Airlines states that we should clarify that the flightcrew or maintenance personnel can perform the operation of the flaps for 5 cycles specified in paragraph 4.a. of the quoted material in paragraph (h)(2) of this AD. Pinnacle states that allowing only flightcrews to perform this function, under certain circumstances (such as crew duty time issues), could have substantial negative logistic impacts, which could have a negative impact on passenger service.

We disagree with the commenter. The operation of the flaps for 5 cycles, as specified in paragraph 4.a. of the quoted material in paragraph (h)(2) of this AD, is intended to be a flightcrew function. Doing this operation is predicated on the condition specified in (h)(6) of this AD when maintenance resources are not available. If maintenance personnel are available, operators should be performing the maintenance procedures in accordance with the fault isolation manual, as specified in paragraph (h)(6) of this AD. We have not revised this AD in this regard.

• Pinnacle Airlines requests that we clearly specify when the operational checks in paragraph 4.b. of the quoted material terminate.

We disagree with the request to add a statement for terminating action for paragraph 4.b. of the quoted material. We have determined that to mitigate the risk of multiple flap fail events, and until further rulemaking is considered, the requirements of paragraph 4.b. must be followed as stipulated in paragraph (h)(6) of this AD. We have not revised this AD in this regard.

• Air Wisconsin requests that we add language stating that ''an aircraft can be returned to revenue service after a flap system reset is accomplished after a Flap Fail event provided that (then list the conditions).''

We disagree with the request to add language to paragraph 4. of the quoted material in paragraph (h)(2) of this AD to specify when an aircraft can be returned to service. The requirements of paragraph (h)(2) of this AD are limitations. However, in paragraph (h)(6) of this AD, we do specify the criteria for returning the airplane to service following a flap fail event. We have not revised this AD in this regard.

• Regarding paragraph 4.a. of the quoted material in paragraph (h)(2) of the NPRM, Comair requests that, for the flightcrew system tests, we clarify that the cycling of the flaps through 5 cycles applies only to the first flight following the flap reset by specifying, ''For the first flight following an on-ground circuit breaker reset, prior to dispatch, the flaps must be operated for five full extension/retraction cycles with no subsequent failures.''

We clarify that the intent is to perform the action of paragraph 4.a. once prior to dispatch following a flap fail event. We have revised that paragraph to read: ''Prior to the initial dispatch following an on-ground circuit breaker reset, the flaps must be operated for five full extension/retractions cycles by the flightcrew with no subsequent failures.''

• Comair requests that, for flightcrew system tests, we clarify that the term ''take-off,'' instead of ''dispatch,'' should be used for the following tests to allow the crew to perform them during taxi-out: thrust reverse, ground spoiler, and brake system. Air Wisconsin requests that we replace the word ''dispatch'' with the word ''flight'' in paragraphs 4.a. and 4.b. of the quoted material in paragraph (h)(2) of the NPRM.

We disagree with revising the word ''dispatch'' in paragraph 4.a. of the quoted material in paragraph (h)(2) of the NPRM. We intend that these operations are to be performed as part of a pre-taxi checklist. We do not want these operations to be performed during taxi where, if discrepancies are noted, corrective actions would impact airport congestion and ground control services if the airplane has to return to the gate. However, as stated previously, we have revised paragraph 4.b. of the quoted material in paragraph (h)(2) of this AD to specify ''each flight'' instead of ''dispatch.''

**Request To Clarify Paragraph (h)(4) of the NPRM**

Comair requests that we clarify the intent of paragraph (h)(4) of the NPRM. Comair states that many of its actuators are in the category covered by paragraphs (g)(3)(i) and (g)(3)(ii) of the NPRM, for which no additional action for paragraph (g)(3) of the NPRM is required. Comair questions whether the intent of the new maintenance action in paragraph (h)(4) of the NPRM is to require a low-temperature torque test even for those actuators for which no action was required under paragraph (g)(3) of the NPRM.

We provide the following clarification. Paragraph (h)(4) of this AD does not apply to actuators on which no action was required by paragraph (g)(3) of this AD. The wording in paragraph (h)(4) of this AD, ''New Maintenance Action,'' is explicit in that it applies to ''* * * airplanes for which the low temperature torque test of flap actuators is required by paragraph (g)(3) of this AD * * *'' Paragraph (g)(3) of this AD applies only to actuators identified in paragraph (g)(3) and that meet the specifications in paragraph (g)(3)(i) or (g)(3)(ii) of this AD. Therefore, there is no requirement to perform a repetitive low-temperature torque test for actuators for which no action was required under paragraph (g)(3) of this AD. We have not revised this AD in this regard.

**Request To Add Phase-in Period to Paragraph (h)(4) of the NPRM**

Comair and Air Wisconsin request that we add a phase-in period to paragraph (h)(4) of the NPRM. Comair notes that a number of actuators are compliant with Bombardier Service Bulletin 601R–27–150, dated July 12, 2007, from as early as February 15, 2008. Comair states that it is unlikely this NPRM will supersede AD 2008–01–04 before February 15, 2009, and therefore some actuators will already have exceeded 12 months since last compliance. Comair concludes that since under AD 2008–01–04, paragraph (g)(3) was only a one-time compliance, and paragraph (h)(4) of the NPRM will now make that repetitive, a phase-in is necessary for actuators having early compliance.

We agree with the commenter's request to add a grace period to the compliance time of ''within 12 months after doing the low temperature torque test'' specified in paragraph (h)(4) of this AD. To avoid undue burden on the operators, adding a grace period is both desirable and prudent. We have determined that adding a 60-day grace period will not adversely affect safety. We have revised paragraph (h)(4) of this AD accordingly.

**Request To Revise Reference**

Comair, PSA Airlines, and Pinnacle Airlines request that we revise the reference to the fault isolation manual specified in paragraph (h)(6) of the NPRM. The commenters state that because the NPRM specifies Revision 38, dated January 10, 2008, of Section 27–50–00 of Chapter 27 of the Bombardier Canadair Regional Jet CRJ 100/200/440 Fault Isolation Manual CSP A–009, Volume 1 (the ''FIM''), operators will not be in compliance when using later revisions of the FIM. Comair states that operators have no control over Bombardier revisions. PSA and Pinnacle state that an alternative method of compliance would be needed to use later Bombardier revisions. PSA recommends we remove the reference to Revision 38 of the FIM. Pinnacle recommends that we add ''or later revisions'' to the FIM reference.

We cannot agree to revise the reference to the FIM specified in paragraph (h)(6) of this AD. We must specify a revision and a date to meet Office of Federal Register (OFR) regulations for publications incorporated by reference. We also cannot refer to ''later revisions'' of applicable service information according to OFR regulations. We have not revised this AD in this regard.

**Request To Revise Certain ''Part'' References**

Comair, Pinnacle Airlines, and Mesa Airlines request that we revise certain ''Part'' references in the NPRM. (The ''Part'' references correspond to language in the mandatory continuing airworthiness information.) Comair states that both paragraphs (h)(6) and (h)(7) of the NPRM are listed as ''Part V.'' Mesa states that paragraphs (h)(4) and (h)(5) are labeled as ''Part IV.'' Pinnacle notes that paragraphs (h)(5), (h)(6), and (h)(7) of the NPRM should refer to Parts V, VI, and VII, respectively.

Based on the commenters' remarks, we have reconsidered including ''Part'' references in this AD. In the NPRM, we intentionally included these references to correspond to the Canadian airworthiness directive. However, we find that referring to a ''Part'' of a Canadian airworthiness directive in the U.S. AD does not add clarity, is unnecessary, and may result in confusion for the reader. Therefore, we have removed these references from this AD.

**Request To Limit Reporting Requirement**

Comair and Air Wisconsin request that we limit the reporting requirement specified in paragraph (h)(7) of the NPRM. Comair states that a 2-year limit should provide enough data. Air Wisconsin also states that reporting should be limited to 2 years or dropped from the requirements. Pinnacle also notes that the reporting requirement is onerous and will require substantial logistics on the operator's part.

We agree to revise the reporting requirement in paragraph (h)(7) of this AD. The reporting requirement is necessary and must be mandated to monitor the effectiveness of the AD actions and to assist the manufacturer and the regulatory authorities in determining if additional rulemaking action is necessary. However, we agree the reporting can be limited. We have revised paragraph (h)(7) of this AD to specify that reporting is required for only 24 months.

**Request for Clarification on Inoperable Items**

PSA Airlines requests that we clarify whether it is OK to operate with items that are inoperable per the minimum equipment list (MEL).

The AD takes precedence over other service information. Operating an airplane that does not comply with the AD violates part 39 of the Federal Aviation Regulations (14 CFR 39).

According to sections 121.628(b)(2) and 91.213(b)(2) of the Federal Aviation Regulations (14 CFR 121.628(b)(2) and 91.213(b)(2)), instruments and equipment required by an AD to be in operable condition may not be included in the MEL unless the AD provides otherwise.

**Request To Clarify Compliance With the FIM**

PSA Airlines requests that we clarify how to comply with the FIM requirements in paragraph (h)(6) of the NPRM. The commenter states that since the FIM is a multiple-part document covering flight operations, dispatch, and maintenance, it is difficult to provide documentation for compliance with each part. The commenter also states that if part of this AD will require sign-offs for each event, compliance documentation could be very confusing after a number of sign-offs. The commenter recommends inserting language that would eliminate the need for repetitive sign-offs, such as stating that the FIM maintenance requirements of paragraph (h)(6) must be tracked and completed in a manner acceptable to the principal maintenance inspector (PMI).

We agree that adding the statement PSA Airlines requests would be effective. Therefore, we have revised paragraph (h)(6) of this AD to add the following statement: ''These maintenance requirements must be tracked in a manner acceptable to the principal maintenance inspector (PMI).''

**Request To Clarify Paragraph (h)(6)(ii) of the NPRM**

Several commenters request that we clarify paragraph (h)(6)(ii) of the NPRM.

Air Wisconsin requests that we clarify whether paragraph (h)(6)(ii) of the NPRM, which states ''If another flap fail event occurs any time after the initial circuit breaker reset operation * * *'' is meant to be within the process of exercising the components/systems specified in paragraph 4. ''Dispatch Following a Flap Failed Event'' of the quoted material in paragraph (h)(2) of this AD.

PSA Airlines requests that we clarify paragraph (h)(6)(ii) of the NPRM by adding, ''another event within the 10 cycle limit'' or ''another event prior to completion of the FIM procedure from the previous event.'' PSA states that the current wording could be interpreted to mean either another event within the 10-cycle limit, or anytime after an initial flap rest, regardless of whether the FIM procedure has been complied with.

Pinnacle Airlines requests that we add language to paragraph (h)(6)(ii) of the NPRM that specifies when the requirement to perform the maintenance actions of paragraph (h)(6) of the NPRM is no longer relevant. The commenter indicates that the statement requires that the action be continued in perpetuity.

We agree to clarify paragraph (h)(6)(ii) of this AD. Paragraph (h)(6)(ii) of this AD is intended to apply to any flap fail event, whether in flight or during any of the checks required in paragraph 4.a. of the quoted material in paragraph (h)(2) of this AD. However, we do not intend that paragraph (h)(6)(ii) of this AD apply to any event regardless of whether the FIM procedure has been complied with. The paragraph (h)(6)(ii) requirement to perform the maintenance actions is required only if another flap fail event occurs during the 10-flight-cycle period following the initial circuit breaker rest authorized in paragraph (h)(6) of this AD. We have revised paragraph (h)(6)(ii) of this AD to clarify that if another flap fail event occurs anytime ''within the 10-flight-cycle limit'' after the initial circuit breaker reset operation, the maintenance actions are required to be done before further flight.

**Request To Clarify Special Flight Permits**

PSA Airlines requests that a statement be added to indicate that aircraft having a second flap event or an aircraft on which the flaps cannot be reset may be ferried to a location where the FIM procedure specified in paragraph (h)(6) of this AD can be accomplished.

We do not agree that it is necessary to add a statement to this AD. This AD does not prohibit ferry flights. Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), may be requested to operate the airplane to a location where the requirements of this AD can be accomplished. We have not revised this AD in this regard.

**Request To Substantiate Repetitive Low Temperature Torque Test**

Mesa Airlines requests data for substantiating the repeat of the low temperature torque test every 12 months following the initial test.

The necessity for repeat tests and the compliance time interval were determined by the State of Design authority (Transport Canada Civil Aviation (TCCA)) based on risk analysis and consultation with the airplane manufacturer. We have considered TCCA's determination, as well as the safety implications and the time necessary to do the inspections, and have determined that requiring the repetitive low temperature torque tests at 12-month intervals is appropriate. However, under the provisions of paragraph (j) of the AD, we will consider requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not revised this AD in this regard.

**Request To Consider an Option to the Existing Actuator System**

Cox and Company requests that its ''Flap Actuator Heating System'' be considered as an ''add on'' option to the existing actuator system. The commenter states that its test data indicate that its ''Flap Actuator Heating System'' will eliminate nearly all soft jams that occur on Bombardier Model CL–600–2B19 airplanes during cold weather.

We do not concur. We cannot include such an option in an AD when that option is not yet certificated. When the design has received an FAA Supplemental Type Certificate (STC), it is the operator's discretion to consider installation. However, under the provisions of paragraph (j) of this AD, we will consider requests from operators for approval of an AMOC if sufficient data are submitted to substantiate that the installation would provide an acceptable level of safety. We have not revised this AD in this regard.

**Request To Add Calendar Limitation**

Pinnacle Airlines requests that we add a calendar limitation to paragraph 4. of the quoted material in paragraph (h)(2) of the NPRM that is similar to the limitation specified in paragraph 3. of the same quote. Pinnacle is concerned that not having a calendar limitation would result in significant operational impacts throughout the calendar year.

We disagree with the request to add a calendar limitation to paragraph 4. of the quoted material in paragraph (h)(2) of this AD. Paragraph 3. of the quoted material in paragraph (h)(2) of this AD is specifically focused on mitigating a cold weather flap fail event. However, while paragraph 4. applies to cold weather events, it is not limited to that scenario. Therefore, regardless of weather conditions, paragraph 4. of the quoted material in paragraph (h)(2) of this AD is necessary to address the identified unsafe condition. We have not revised this AD in this regard.

**Request To Clarify Compliance**

Pinnacle Airlines asks whether non-compliance with the AD would happen if the flightcrew does the operational check specified in paragraph 4.a. of the

quoted material in paragraph (h)(2) of the NPRM and neglects to record compliance with the check. Pinnacle Airlines also asks whether for paragraph 4.b. in the quoted material in the same paragraph non-compliance with the AD would happen if the flightcrew neglects to record compliance with the requirement for the operational check of the thrust reversers, ground spoilers, and brake system.

Compliance with paragraphs 4.a. and 4.b. of the quoted material in paragraph (h)(2) of this AD is predicated on paragraph (h)(6) of this AD, which invokes the limitation specified in paragraph (h)(2) of this AD if the maintenance actions cannot be performed. The exception to doing the maintenance actions was intended for relief only when an airplane was at a location where maintenance personnel and/or equipment were not available. Maintenance control authorization is required for the flightcrew to perform this operation. The method of documentation is at the discretion of the operator and the principal operations inspector (POI). We have not revised this AD in this regard.

**Request To Clarify the Phrase ''Maintenance Actions Cannot Be Done''**

Pinnacle Airlines and Air Wisconsin request that we clarify the phrase ''maintenance actions cannot be done'' in paragraph (h)(6) of the NPRM. Pinnacle Airlines requests that we provide specific language and conditions concerning this statement and questions if maintaining flight schedule integrity is an adequate reason to establish that ''maintenance actions cannot be done.''

We agree that the statement can be clarified. The intent of this AD is to prevent an unsafe condition. The only reason for deferring maintenance is a lack of available maintenance resources. We have revised paragraph (h)(6) of this AD by replacing ''if maintenance actions cannot be done'' with ''if maintenance resources are not available.''

**Request To Add Requirement to Paragraph (h)(2) of the NPRM**

Pinnacle Airlines requests that we include in paragraph 4. of the quoted material in paragraph (h)(2) of the NPRM the following statement: ''Circuit breaker reset operation can be performed by the flight crew when authorized by the operator's maintenance control organization.'' Pinnacle Airlines notes that this statement is also in paragraph (h)(6) of the NPRM.

We disagree with the request to add the statement suggested by the commenter. The reset function stipulated in paragraph 4. of the quoted material in paragraph (h)(2) of this AD is intended to be done by the flightcrew. Compliance with this paragraph is predicated on paragraph (h)(6) of this AD, which invokes the limitation specified in paragraph (h)(2) of this AD only if maintenance actions in accordance with the FIM cannot be performed. We have not revised this AD in this regard.

**Request To Clarify Compliance With Paragraph (h)(7) of the NPRM**

Pinnacle Airlines requests that we clarify compliance with paragraph (h)(7) of the NPRM. Pinnacle questions whether it would constitute non-compliance with the AD if the operator does not obtain all of the flaps electronic control unit (FECU) codes and report them to Bombardier within 30 days. Pinnacle also would like to know how the operator brings an airplane back into regulatory compliance if the FAA considers the aforementioned scenario to be non-compliance with the AD.

Non-compliance with the reporting requirement in paragraph (h)(7) of this AD is non-compliance with the AD. The operator brings the aircraft back into compliance by meeting the reporting requirements. Under the provisions of paragraph (j) of this AD, we will consider requests from affected persons for approval of an AMOC. We have not revised this AD in this regard.

**Request To Clarify the Phrase ''or 30 Days After the Effective Date of This AD''**

Air Wisconsin requests that we clarify what is meant in paragraph (h)(7) of the NPRM by the phrase, ''or 30 days after the effective date * * *.''

The intent of the phrase ''30 days after the effective date'' in paragraph (h)(7) of the NPRM is to allow additional time for operators to report if fault data were found before the effective date of this AD. However, we have revised paragraph (h)(7) of this AD to limit the need to report to ''as of the effective date of this AD'' and, therefore, we have removed the phrase ''30 days after the effective date'' from paragraph (h)(7) of this AD.

**Request To Revise Reference**

Pinnacle Airlines requests that paragraph (h)(7) of the NPRM be amended to indicate ''Task 05–51–50–980–801 as introduced in the Canadair Regional Jet TR 05–035, dated July 13, 2007, to the Canadair Regional Jet Aircraft Maintenance Manual (AMM), or latest revision.'' Pinnacle Airlines states that when Bombardier incorporates TR 05–035 into the AMM, operators will have to obtain an AMOC to comply with the AD.

We cannot agree with the commenter's request to add a reference to the latest revision of the service bulletin. We cannot refer to later revisions of applicable service information according to OFR regulations for publications incorporated by reference. We agree that affected persons will have to obtain an AMOC to comply with the AD if they plan to use later revisions. We have not revised this AD in this regard.

**Request To Clarify Intent of Paragraph 3.a.(i) in the Quoted Material of Paragraph (h)(2) of the NPRM**

Air Wisconsin requests that we verify that the intent of paragraph 3.a.(i) of the quoted material in paragraph (h)(2) of the NPRM was to include a reference to overhaul.

The text in paragraph 3.a.(i) of the quoted material in paragraph (h)(2) of this AD is correct. We intended to include a reference to overhaul. We have not revised this AD in this regard.

**Request To Clarify Compliance With Paragraph (g)(3) of the NPRM**

Air Wisconsin asks whether paragraph (h)(4) of the NPRM supersedes paragraph (g)(3) of the NPRM.

Paragraph (h)(4) of this AD does not ''supersede'' paragraph (g)(3) of this AD. Paragraph (h)(4) of this AD refers to paragraph (g)(3) of this AD as a means of identification of those actuators to which the requirements of paragraph (h)(4) apply. In other words, for those actuators that have had the initial test required by paragraph (g)(3) of this AD, operators must repeat the test in accordance with the requirements of paragraph (h)(4) of this AD every 12 months. We have not revised this AD in this regard.

**Request To Revise FIM Reference To Refer to Part Numbers**

Air Wisconsin requests that we revise paragraph (h)(6) of the NPRM to say ''* * * IAW section 27–50–00 of the FIM, CSP A–009 as introduced in revision 38 dated January 10, 2008 as it applies to the affected part numbers identified in par (g)(3)(i) and (ii).''

We do not agree to revise paragraph (h)(6) of this AD. The conditions of paragraphs (g)(3)(i) and (g)(3)(ii) of this AD apply to the low temperature torque testing requirements of paragraph (g)(3) of this AD. Those conditions have no

correlation to the FIM procedures that are to be followed after a flap fail event. We have not revised this AD in this regard.

**Request To Clarify Actions**

Air Wisconsin requests that we clarify what to do if the maintenance actions specified in paragraph (h)(6)(i) of the NPRM cannot be done.

If an operator cannot comply with an AD, the operator must contact the FAA for repair instructions. For this AD, operators may request an AMOC, as specified in paragraph (j)(1) of this AD. We have not revised this AD in this regard.

**Request for an Alternative Method to Paragraph (h)(8) of the NPRM**

Air Wisconsin requests that we allow the installation of a placard that is an alternative to the placard specified in paragraph (h)(8) of the NPRM. The commenter suggests that, as an alternative to using the placard identified in Bombardier Service Bulletin 601R–11–090, dated August 15, 2008, operators can use a placard that says ''Do Not Extend Flaps to 8 or 20 above 200 KIAS.''

We do not agree to revise paragraph (h)(8) of this AD. The intention of this paragraph is to apply to all operators. Individual operators have the option of using an alternative placard by requesting an AMOC in accordance with the procedures specified in paragraph (j) of this AD. We have not revised this AD in this regard.

**Request To Revise Wording in Paragraphs 1.a. and 1.b. of the Quoted Material in Paragraph (f)(2) of the NPRM**

The Air Line Pilots Association (ALPA) requests that we revise the wording in paragraphs 1.a. and 1.b. of the quoted material in paragraph (f)(2) of the NPRM so that the phrase ''and can be reasonably expected to remain at or above this visibility until after landing'' is replaced with ''and shall be forecast in the Terminal Area Forecast (TAF) to remain at or above this visibility until after landing.''

We acknowledge the commenter's request. However, paragraph (f)(2) of this AD is a restatement of the existing requirements of AD 2008–01–04. We cannot change the wording, as those who have already complied with the AFM revision specified in that AD would then be out of compliance.

However, we infer the commenter intended to request that we revise the new AFM revision specified in paragraph (h)(2) of this AD. We have changed the wording in paragraph 1.a. of the quoted material in paragraph (h)(2) of this AD as follows:

''When conducting a precision approach, the reported visibility (or RVR) is confirmed to be at or above the visibility associated with the landing minima for the approach in use, and shall be forecast in the Terminal Area Forecast (TAF) to remain at or above this visibility until after landing; or''

We have changed the wording in paragraph 1.b. of the quoted material in paragraph (h)(2) of this AD as follows:

''When conducting a non-precision approach, the reported ceiling and visibility (or RVR) are confirmed to be at or above the ceiling and visibility associated with the landing minima for the approach in use, and shall be forecast in the Terminal Area Forecast (TAF) to remain at or above this visibility until after landing; or''

**Request To Add Language Calling for a Permanent Solution**

ALPA requests that we add language to the NPRM to be similar to Canadian AD CF–2007–10R1, which calls out the need for a permanent solution. The commenter states that it appears that a flap actuator redesign proposal has been accepted by the Canadian Transportation Safety Board and is being developed by the manufacturer that will ultimately remove some of the operational and maintenance actions called out in this AD. The commenter also states that a provision for a permanent solution that will ultimately remove some of the operational and maintenance actions called out in this AD must be included in this AD.

We do not agree to add language specifying that there is a need for a permanent solution. Such a statement adds no additional risk mitigation or clarification. The new actuators referred to in paragraph (h)(5) of this AD are an optional maintenance action that would terminate the requirements of paragraph 3. of the quoted material in paragraph (h)(2) of this AD. In addition, the reporting requirement of paragraph (h)(7) of this AD is being used to monitor the effectiveness of the AD actions and will enable the manufacturer to obtain better insight into the nature, cause, and extent of the issue, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we might consider further rulemaking. We have not revised this AD in this regard.

**Request To Add Language To Address ''Known Icing Enroute''**

ALPA requests that we add language to the NPRM to address ''known icing enroute.'' ALPA states that diversion operations in icing conditions could pose a serious icing risk for aircraft operating with the flaps at some intermediate setting. ALPA concludes that the unintended consequences of an aircraft's flaps being exposed to icing conditions for extended periods of time must be addressed in the operational portion of the NPRM.

We appreciate ALPA's comment for identifying a generic issue in the AFM. While this comment is not specific to this AD, it has highlighted a deficiency in the Abnormal Procedures section of the AFM. Flap failure in an extended position while in icing conditions is a generic issue. A TR to the AFM may be issued to address this deficiency. Once this TR has been issued and approved, we might consider further rulemaking. We have not revised this AD in this regard.

**Conclusion**

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

**Differences Between This AD and the MCAI or Service Information**

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

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

**Costs of Compliance**

We estimate that this AD will affect 684 products of U.S. registry. We also estimate that it will take about 18 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost a negligible amount per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of

this AD to the U.S. operators to be $984,960, or $1,440 per product.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

For the reasons discussed above, I certify this AD:

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

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

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

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

**Examining the AD Docket**

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. The FAA amends § 39.13 by removing Amendment 39–15329 (73 FR 1964, January 11, 2008) and adding the following new AD:

**2009–06–12 Bombardier, Inc. (Formerly Canadair):** Amendment 39–15848. Docket No. FAA–2008–1318; Directorate Identifier 2008–NM–155–AD.

**Effective Date**

(a) This airworthiness directive (AD) becomes effective April 15, 2009.

**Affected ADs**

(b) This AD supersedes AD 2008–01–04, Amendment 39–15329.

**Applicability**

(c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, serial numbers 7003 through 7990 and 8000 and subsequent.

**Subject**

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

**Reason**

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

* * * * *

The Bombardier CL–600–2B19 airplanes have had a history of flap failures at various positions for several years. Flap failure may result in a significant increase in required landing distances and higher fuel consumption than planned during a diversion. * * *

* * * * *

**Requirements of AD 2007–17–07, Amendment 39–15165: Actions and Compliance**

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

(1) Airplane Flight Manual (AFM) Change: Within 30 days after September 5, 2007 (the effective date of AD 2007–17–07), revise the Canadair Regional Jet Airplane Flight Manual CSP A–012, by incorporating the information in Canadair Regional Jet Temporary Revision (TR) RJ/165, dated July 6, 2007, into the AFM. Accomplishing the requirements of paragraph (h)(1) of this AD terminates the requirements of this paragraph and the AFM revision required by this paragraph may be removed from the AFM.

**Note 1:** The actions required by paragraph (f)(1) of this AD may be done by inserting a copy of Canadair Regional Jet TR RJ/165, dated July 6, 2007, into the Canadair Regional Jet Airplane Flight Manual CSP A–012. When this TR has been included in general revisions of the AFM, the general revisions may be inserted in the AFM.

(2) Operational Procedures: Within 30 days after September 5, 2007, revise the Limitations Section of the Canadair Regional Jet Airplane Flight Manual CSP A–012, to include the following statement. This may be done by inserting a copy of paragraph (f)(2) of this AD in the AFM. Accomplishing the requirements of paragraph (h)(2) of this AD terminates the requirements of this paragraph and the AFM revision required by this paragraph may be removed from the AFM.

**''1. Flap Extended Diversion**

Upon arrival at the destination airport, an approach shall not be commenced, nor shall the flaps be extended beyond the 0 degree position, unless one of the following conditions exists:

a. When conducting a precision approach, the reported visibility (or RVR) is confirmed to be at or above the visibility associated with the landing minima for the approach in use, and can be reasonably expected to remain at or above this visibility until after landing; or

b. When conducting a non-precision approach, the reported ceiling and visibility (or RVR) are confirmed to be at or above the ceiling and visibility associated with the landing minima for the approach in use, and can be reasonably expected to remain at or above this ceiling and visibility until after landing; or

c. An emergency or abnormal situation occurs that requires landing at the nearest suitable airport; or

d. The fuel remaining is sufficient to conduct the approach, execute a missed approach, divert to a suitable airport with the flaps extended to the landing position, conduct an approach at the airport and land with 1000 lb (454 kg) of fuel remaining.

**Note 1:** The fuel burn factor (as per AFM TR/165) shall be applied to the normal fuel consumption for calculation of the flaps extended missed approach, climb, diversion and approach fuel consumption.

**Note 2:** Terrain and weather must allow a minimum flight altitude not exceeding 15,000 feet along the diversion route.

**Note 3:** For the purpose of this AD, a ''suitable airport'' is an airport that has at least one usable runway, served by an instrument approach if operating under Instrument Flight Rules (IFR), and the airport is equipped as per the applicable regulations and standards for marking and lighting. The existing and forecast weather for this airport shall be at or above landing minima for the approach in use.

**2. Flap Failure After Takeoff**

When a takeoff alternate is filed, terrain and weather must allow a minimum flight

altitude not exceeding 15,000 feet along the diversion route to that alternate, or other suitable airport. The fuel at departure shall be sufficient to divert to the takeoff alternate or other suitable airport with the flaps extended to the takeoff position, conduct and approach and land with 1000 lb (454 kg) of fuel remaining.

**Note:** The fuel burn factor (as per AFM TR/165) shall be applied to the normal fuel consumption for calculation of the flaps extended, climb, diversion and approach fuel consumption.

**3. Flap Zero Landing**

Operations where all useable runways at the destination and alternate airports are forecast to be wet or contaminated (as defined in the AFM) are prohibited during the cold weather season (December to March inclusive in the northern hemisphere) unless one of the following conditions exists:

a. The flap actuators have been verified serviceable in accordance with Part C (Low Temperature Torque Test of the Flap Actuators) of SB 601R–27–150, July 12, 2007, or

b. The flight is conducted at a cruise altitude where the SAT is −60 deg C or warmer. If the SAT in flight is colder than −60 deg C, descent to warmer air shall be initiated within 10 minutes, or

c. The Landing Distance Available on a useable runway at the destination airport is at least equal to the actual landing distance required for flaps zero. This distance shall be based on Bombardier performance data, and shall take into account forecast weather and anticipated runway conditions, or

d. The Landing Distance Available on a useable runway at the filed alternate airport, or other suitable airport is at least equal to the actual landing distance for flaps zero. This distance shall be based on Bombardier performance data, and shall take into account forecast weather and anticipated runway conditions.

**Note 1:** If the forecast destination weather is less than 200 feet above DH or MDA, or less than 1 mile (1500 meters) above the authorized landing visibility (or equivalent RVR), as applied to the usable runway at the destination airport, condition 3.a., 3.b., or 3.d. above must be satisfied.

**Note 2:** When conducting No Alternate IFR (NAIFR) operations, condition 3.a., 3.b., or 3.c. above must be satisfied.''

(3) Training: As of 30 days after September 5, 2007, no affected airplane may be operated unless the flight crewmembers of that airplane and the operational control/dispatch personnel for that airplane have received training that is acceptable to the principal operations inspector (POI) on the operational procedures required by paragraph (f)(2) of this AD. Accomplishing the requirements of paragraph (h)(3)(i) of this AD terminates the requirements of this paragraph.

(4) Maintenance Actions: Within 120 days after September 5, 2007, do the cleaning and lubrication of the flexible shafts, installation of metallic seals in the flexible drive-shafts, and all applicable related investigative and corrective actions by doing all the applicable actions specified in ''PART A'' of the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–150, dated July 12, 2007; except if torque test results are not satisfactory, before further flight, install a serviceable actuator in accordance with the service bulletin or, if no serviceable actuators are available, contact the Manager, New York Aircraft Certification Office, FAA, for corrective action. Do all applicable related investigative and corrective actions before further flight.

**Requirements of AD 2008–01–04: Actions and Compliance With Revised Affected Airplanes for Paragraph (g)(3)**

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

(1) As of November 30, 2008, no affected airplane may be operated unless the flight crewmembers of that airplane have received simulator training on reduced or zero flap landing that is acceptable to the POI. Thereafter, this training must be done during the normal simulator training cycle, at intervals not to exceed 12 months. Accomplishing the requirements of paragraph (h)(3)(ii) of this AD terminates the requirements of this paragraph.

(2) Within 24 months or 4,000 flight hours after February 15, 2008 (the effective date of AD 2008–01–04), whichever occurs first: Do a pressure test of the flexible drive-shaft, and do all applicable corrective actions, by doing all the applicable actions specified in ''PART B'' of the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–150, dated July 12, 2007. Do all applicable corrective actions before further flight.

(3) For airplanes having flap actuators, part numbers (P/Ns), 852D100–19/–21, 853D100–19/–20, and 854D100–19/–20 (Bombardier P/Ns 601R93101–19/–21, 601R93103–19/–20, and 601R93104–19/–20), specified in paragraphs (g)(3)(i) and (g)(3)(ii) of this AD: Within 24 months after February 15, 2008, do a low temperature torque test of the flap actuators, and do all applicable corrective actions, by doing all the applicable actions specified in ''PART C'' of the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–150, dated July 12, 2007. Do all applicable corrective actions before further flight.

(i) Airplanes having actuators that have not been repaired and that have accumulated more than 5,000 flight cycles since new.

(ii) Airplanes having actuators that have been repaired and that have accumulated more than 5,000 flight cycles on the inboard pinion shaft seals, P/Ns 853SC177–1/–2.

**New Requirements of This AD: Actions and Compliance**

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

(1) New AFM Change: Within 30 days after the effective date of this AD, revise the Canadair Regional Jet Airplane Flight Manual (AFM) CSP A–012, by incorporating the information in Canadair Regional Jet Temporary Revision (TR) RJ/165–1, dated August 7, 2008, into the AFM. Accomplishing this action terminates the requirements of paragraph (f)(1) of this AD and after this action has been done, the AFM revision required by paragraph (f)(1) of this AD may be removed from the AFM.

**Note 2:** The actions required by paragraph (h)(1) of this AD may be done by inserting a copy of Canadair Regional Jet TR RJ/165–1, dated August 7, 2008, into the Canadair Regional Jet AFM CSP A–012. When this TR has been included in general revisions of the AFM, the general revisions may be inserted in the AFM.

(2) New Operational Procedures: Within 30 days after the effective date of this AD, revise the Limitations Section of the Canadair Regional Jet AFM CSP A–012, to include the following statement. This may be done by inserting a copy of paragraph (h)(2) of this AD into the AFM. Accomplishing this action terminates the requirements of paragraph (f)(2) of this AD and after this action has been done, the AFM revision required by paragraph (f)(2) of this AD may be removed from the AFM.

**''1. Flap Extended Diversion**

Upon arrival at the destination airport, an approach shall not be commenced, nor shall the flaps be extended beyond the 0 degree position, unless one of the following conditions exists:

a. When conducting a precision approach, the reported visibility (or RVR) is confirmed to be at or above the visibility associated with the landing minima for the approach in use, and shall be forecast in the Terminal Area Forecast (TAF) to remain at or above this visibility until after landing; or

b. When conducting a non-precision approach, the reported ceiling and visibility (or RVR) are confirmed to be at or above the ceiling and visibility associated with the landing minima for the approach in use, and shall be forecast in the Terminal Area Forecast (TAF) to remain at or above this visibility until after landing; or

c. An emergency or abnormal situation occurs that requires landing at the nearest suitable airport; or

d. The fuel remaining is sufficient to conduct the approach, execute a missed approach, divert to a suitable airport with the flaps extended to the landing position, conduct an approach at the airport and land with 1000 lb (454 kg) of fuel remaining.

**Note 1:** The fuel burn factor (as per AFM TR RJ/165–1) shall be applied to the normal fuel consumption for calculation of the flaps extended missed approach, climb, diversion and approach fuel consumption.

**Note 2:** Terrain and weather must allow a minimum flight altitude not exceeding 15,000 feet along the diversion route.

**Note 3:** For the purpose of this AD, a ''suitable airport'' is an airport that has at least one usable runway, served by an instrument approach if operating under Instrument Flight Rules (IFR), and the airport is equipped as per the applicable regulations and standards for marking and lighting. The existing and forecast weather for this airport shall be at or above landing minima for the approach in use.

**2. Flap Failure After Takeoff**

When a takeoff alternate is filed, terrain and weather must allow a minimum flight altitude not exceeding 15,000 feet along the diversion route to that alternate, or other

suitable airport. The fuel at departure shall be sufficient to divert to the takeoff alternate or other suitable airport with the flaps extended to the takeoff position, conduct an approach and land with 1000 lb (454 kg) of fuel remaining.

**Note:** The fuel burn factor (as per AFM TR RJ/165–1) shall be applied to the normal fuel consumption for calculation of the flaps extended, climb, diversion and approach fuel consumption.

**3. Flap Zero Landing**

Operations where all useable runways at the destination and alternate airports are forecast to be wet or contaminated (as defined in the AFM) are prohibited during the cold weather season (December to March inclusive in the northern hemisphere) unless one of the following four conditions (a. through d.) exists:

a. Each installed flap actuator meets one of the following three conditions:

(i) Actuators have less than 5000 flight cycles (FC) since new or overhaul and/or the actuators have been verified serviceable in accordance with Part C (Low Temperature Torque Test of the Flap Actuators) of Bombardier Service Bulletin (SB) 601R–27–150, issued July 12, 2007, or

(ii) Actuators have P/N 601R93101–19/–21 (Vendor P/N 852D100–19/–21), P/N 601R93103–19/–20 (Vendor P/N 853D100–19/–20), or P/N 601R93104–19/–20 (Vendor P/N 854D100–19/–20), and have less than 5000 FC since repair (where it can be shown that the actuator inboard pinion seals, Eaton P/Ns 853SC177–1 and –2, were replaced), or

(iii) Actuators have P/N 601R93101–23/–25 (Vendor P/N 852D100–23/–25) installed at all inboard flap positions, P/N 601R93103–23/–24 (Vendor P/N 853D100–23/–24) installed at outboard flap No. 3 position, and P/N 601R93104–23/–24 (Vendor P/N 854D100–23/-24) installed at outboard flap No. 4 position.

b. Pre-dispatch forecast ground temperature at the time of arrival at destination airport is above −25 deg C, utilizing a reliable weather forecast service acceptable to the principal operations inspector (POI).

c.The Landing Distance Available on a useable runway at the destination airport is at least equal to the actual landing distance required for flaps zero. This distance shall be based on Bombardier performance data, and shall take into account forecast weather and anticipated runway conditions.

d.The Landing Distance Available on a useable runway at the filed alternate airport, or other suitable airport is at least equal to the actual landing distance for flaps zero. This distance shall be based on Bombardier performance data, and shall take into account forecast weather and anticipated runway conditions.

**Note 1:** If the forecast destination weather is less than 200 feet above DH or MDA, or less than 1 mile (1500 meters) above the authorized landing visibility (or equivalent RVR), as applied to the usable runway at the destination airport, condition 3.a., 3.b., or 3.d. above must be satisfied.

**Note 2:** When conducting No Alternate IFR (NAIFR) operations, condition 3.a., 3.b., or 3.c. above must be satisfied.

**4. Dispatch Following a Flap Failed Event**

If normal flap system operation can be restored after an on-ground system reset, continued revenue operation of that airplane is permitted, provided conditions a. and b., and either c. or d., below are satisfied:

a. Prior to the initial dispatch following an on-ground circuit breaker reset, the flaps must be operated for five full extension/retractions cycles by the flightcrew with no subsequent failures.

b. Prior to each flight following an on-ground circuit breaker reset, the thrust reversers, ground spoilers, and brake system are verified operational by the flightcrew.

c. The Landing Distance Available on a useable runway at the destination airport is at least equal to the actual landing distance required for flaps zero. This distance shall be based on Bombardier performance data, and shall take into account forecast weather and anticipated runway conditions.

d. The Landing Distance Available on a useable runway at the filed alternate airport, or other suitable airport is at least equal to the actual landing distance for flaps zero. This distance shall be based on Bombardier performance data, and shall take into account forecast weather and anticipated runway conditions.

**Note 1:** If the forecast destination weather is less than 200 feet above DH or MDA, or less than 1 mile (1500 meters) above the authorized landing visibility (or equivalent RVR), as applied to the usable runway at the destination airport, condition 4.d. above must be satisfied.

**Note 2:** When conducting No Alternate IFR (NAIFR) operations, condition 4.c. above must be satisfied.''

(3) New Training: Do the requirements specified in paragraphs (h)(3)(i) and (h)(3)(ii) of this AD.

(i) As of 30 days after the effective date of this AD, no affected airplane may be operated unless the flight crewmembers of that airplane and the operational control/dispatch personnel for that airplane have received training that is acceptable to the POI on the operational procedures required by paragraph (h)(2) of this AD. Accomplishing this action terminates the requirements specified in paragraph (f)(3) of this AD.

(ii) As of September 30, 2009, no affected airplane may be operated unless the flight crewmembers of that airplane have received simulator training on reduced or zero flap landing that is acceptable to the POI. Thereafter, this training must be done during the normal simulator training cycle, at intervals not to exceed 12 months. Accomplishing this action terminates the requirements specified in paragraph (g)(1) of this AD.

(4) New Maintenance Action: For airplanes on which the low temperature torque test of the flap actuators is required by paragraph (g)(3) of this AD and on which the actuators have not been replaced: Within 12 months after doing the low temperature torque test specified in paragraph (g)(3) of this AD, or within 60 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 12 months, do a low temperature torque test of the flap actuators, and do all applicable corrective actions specified in Part C of the Accomplishment Instructions of Bombardier Service Bulletin 601R–27–150, dated July 12, 2007. Do all applicable corrective actions before further flight. Replacing the actuators terminates the repetitive torque tests required by this paragraph for those actuators; however, the replacement actuators are still affected by the requirements of paragraph (g)(3) of this AD, and after passing the initial low temperature torque test required by paragraph (g)(3) of this AD, the repetitive torque tests of paragraph (h)(4) of this AD apply again.

(5) New Optional Maintenance Action: Installation of actuators having P/N 601R93101–23/–25 (Vendor P/N 852D100–23/–25), P/N 601R93103–23/–24 (Vendor P/N 853D100–23/–24), and P/N 601R93104–23/–24 (Vendor P/N 854D100–23/–24) in accordance with Bombardier Service Bulletin 601R–27–151, Revision B, dated June 12, 2008, terminates the requirements of paragraph ''3. Flap Zero Landing,'' of the statement required by paragraph (h)(2) of this AD. After doing the installation specified in this paragraph, paragraph ''3. Flap Zero Landing,'' specified in paragraph (h)(2) of this AD, may be removed from the limitations section of the AFM.

(6) Dispatch Following a Flap Fail Event: For airplanes on which a flap fail message occurs, prior to further flight, do all applicable maintenance actions in accordance with Section 27–50–00 of Chapter 27 of the Bombardier Canadair Regional Jet CRJ100/200/440 Fault Isolation Manual CSP A–009, Volume 1, Revision 38, dated January 10, 2008; except if maintenance resources are not available and normal flap system operation can be restored after an on-ground circuit breaker reset operation, then continued revenue operation is permitted without further maintenance action for up to 10 flight cycles, subject to the operating limitations specified by the procedure titled ''4. Dispatch Following a Flap Failed Event,'' specified in paragraph (h)(2) of this AD; except as provided by paragraphs (h)(6)(i) and (h)(6)(ii) of this AD. The circuit breaker reset operation can be performed by the flightcrew when authorized by the operator's maintenance control organization. These maintenance requirements must be tracked in a manner acceptable to the principal maintenance inspector (PMI).

(i) Within 10 flight cycles following the initial on-ground circuit breaker reset operation, do all applicable maintenance actions in accordance with Section 27–50–00 of Chapter 27 of the Bombardier Canadair Regional Jet CRJ100/200/440 Fault Isolation Manual CSP A–009, Volume 1, Revision 38, dated January 10, 2008.

(ii) If another flap fail event occurs anytime within the 10-flight-cycle limit after the initial circuit breaker reset operation, before further flight, do all applicable maintenance actions in accordance with Section 27–50–00 of Chapter 27 of the Bombardier Canadair Regional Jet CRJ100/200/440 Fault Isolation

Manual CSP A–009, Volume 1, Revision 38, dated January 10, 2008.

(7) As of the effective date of this AD, operators are required to report all fault data, including flaps electronic control unit (FECU) codes, to Bombardier within 30 days after each failure occurrence, in accordance with Task 05–51–50–980–801 as introduced in the Canadair Regional Jet TR 05–035, dated July 13, 2007, to the Canadair Regional Jet Aircraft Maintenance Manual (AMM). As of 24 months after the effective date of this AD, the actions specified in this paragraph are no longer required.

(8) Cockpit Placard: Within 120 days after the effective date of this AD, install a flight compartment placard in accordance with Bombardier Service Bulletin 601R–11–090, dated August 15, 2008.

**Method of Compliance With AD 2006–12–21**

(i) Installing flap actuators in accordance with paragraph (h)(5) of this AD is acceptable for compliance with the installation of Number 3 and Number 4 flap actuators required by paragraph (h) of AD 2006–12–21, Amendment 39–14647. All other requirements of paragraph (h) of AD 2006–12–21 are still applicable and must be complied with.

**FAA AD Differences**

**Note 3:** This AD differs from the MCAI and/or service information as follows:

(1) The maintenance tasks specified in the first row of the table in ''Part IV. Maintenance Actions'' of the MCAI do not specify a corrective action if an actuator is not serviceable (i.e., torque test results are not satisfactory). However, this AD requires contacting the FAA or installing a serviceable actuator before further flight if torque test results are not satisfactory. (Reference paragraph (f)(4) of this AD.)

(2) Although paragraph 2. of ''Part III. Training'' of the MCAI recommends accomplishing the new training within 1 year, this AD requires accomplishing the training before September 30, 2009, in order to ensure that the actions are completed prior to the onset of cold weather operations.

(3) For the Flaps Zero Landing requirements in paragraph 3.a (i) of ''Part II. Operational Procedures,'' the MCAI refers to actuators with less than 5,000 flight cycles. We have clarified sub-paragraph 3.a.(i) of paragraph ''3. Flap Zero Landing,'' of the statement specified in paragraph (h)(2) of this AD that the 5,000 flight cycles is since new or overhauled.

(4) For the Flaps Zero Landing requirements in paragraph 3.c. of ''Part II. Operational Procedures,'' the MCAI requires a pre-dispatch forecast ground temperature at the time of arrival at the destination airport to be above −25 deg C. This AD clarifies sub-paragraph 3.b. of paragraph ''3. Flap Zero Landing,'' of the statement specified in paragraph (h)(2) of this AD that the source of the forecast is to be a reliable weather forecast service acceptable to the POI.

**Other FAA AD Provisions**

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

(1)(i) 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: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–171, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; 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.

(ii) AMOCs approved previously in accordance with AD 2008–01–04 are approved as AMOCs for the corresponding provisions of this AD.

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

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

**Related Information**

(k) Refer to MCAI Canadian Airworthiness Directive CF–2007–10R1, dated August 18, 2008, and the service information identified in Table 1 of this AD for related information.

TABLE 1—RELATED SERVICE INFORMATION

| Service information | Revision level | Date |
|---|---|---|
| Bombardier Service Bulletin 601R–27–150 | Original | July 12, 2007. |
| Bombardier Service Bulletin 601R–27–151 | B | June 12, 2008. |
| Bombardier Service Bulletin 601R–11–090 | Original | August 15, 2008. |
| Canadair Regional Jet TR RJ/165 to the Canadair Regional Jet AFM CSP A–012 | Original | July 6, 2007. |
| Canadair Regional Jet TR RJ/165–1 to the Canadair Regional Jet AFM CSP A–012 | Original | August 7, 2008. |
| Canadair Regional Jet TR 05–035 to the Canadair Regional Jet AMM | Original | July 13, 2007. |
| Section 27–50–00 of Chapter 27 of the Bombardier Canadair Regional Jet CRJ100/200/440 Fault Isolation Manual CSP A–009, Volume 1. | 38 | January 10, 2008. |

**Material Incorporated by Reference**

(l) You must use the service information contained in Table 2 of this AD to do the actions required by this AD, as applicable, unless the AD specifies otherwise.

TABLE 2—ALL MATERIAL INCORPORATED BY REFERENCE

| Service information | Revision level | Date |
|---|---|---|
| Bombardier Service Bulletin 601R–27–150, including Appendix A | Original | July 12, 2007. |
| Bombardier Service Bulletin 601R–27–151 | B | June 12, 2008. |
| Bombardier Service Bulletin 601R–11–090 | Original | August 15, 2008. |
| Canadair Regional Jet Temporary Revision RJ/165 to the Canadair Regional Jet Airplane Flight Manual CSP A–012. | Original | July 6, 2007. |
| Canadair Regional Jet TR RJ/165–1, including pages 05–11–5 through 05–11–14, to the Canadair Regional Jet AFM CSP A–012. | Original | August 7, 2008. |
| Canadair Regional Jet TR 05–035 to the Canadair Regional Jet AMM | Original | July 13, 2007. |
| Section 27–50–00 of Chapter 27 of the Bombardier Canadair Regional Jet CRJ100/200/440 Fault Isolation Manual CSP A–009, Volume 1. | 38 | January 10, 2008. |

Bombardier Canadair Regional Jet CRJ100/200/440 Fault Isolation Manual CSP A–009, Volume 1, Revision 38, dated January 10, 2008, contains the following effective pages:

| List of Effective Pages | | | |
|---|---|---|---|
| Page title/description | Page number(s) | Revision number | Date shown on page(s) |
| FIM Title Page | None shown | 38 | January 10, 2008. |
| Transmittal Letter | 1 | 38 | January 10, 2008. |
| Record of Revisions | 1 | ..... | January 10, 2008. |
| FIM Volume 1 Title Page | None shown | 38 | January 10, 2008. |
| Chapter 27 Effective Pages | | | |
| | 1–3 | 38 | January 10, 2008. |
| | 4 | 37 | January 10, 2007. |
| Section 27–50–00 | | | |
| | 101 | 28 | August 26, 2003. |
| | 102–153 | 38 | January 10, 2008. |
| | 154, 156 | 30 | March 17, 2004. |
| | 155 | 34 | April 10, 2005. |

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 3 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 3—NEW MATERIAL INCORPORATED BY REFERENCE

| Service information | Revision level | Date |
|---|---|---|
| Bombardier Service Bulletin 601R–27–151 | B | June 12, 2008. |
| Bombardier Service Bulletin 601R–11–090 | Original | August 15, 2008. |
| Canadair Regional Jet TR RJ/165–1, including pages 05–11–5 through 05–11–14, to the Canadair Regional Jet AFM CSP A–012. | Original | August 7, 2008. |
| Canadair Regional Jet TR 05–035 to the Canadair Regional Jet AMM | Original | July 13, 2007. |
| Section 27–50–00 of Chapter 27 of the Bombardier Canadair Regional Jet CRJ100/200/440 Fault Isolation Manual CSP A–009, Volume 1. | 38 | January 10, 2008. |

(2) The Director of the Federal Register previously approved the incorporation by reference of Bombardier Service Bulletin 601R–27–150, including Appendix A, dated July 12, 2007; and Canadair Regional Jet Temporary Revision RJ/165, dated July 6, 2007, to the Canadair Regional Jet Airplane Flight Manual CSP A–012; on September 5, 2007 (72 FR 46555, August 21, 2007).

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

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

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

Issued in Renton, Washington, on February 26, 2009.

**Ali Bahrami,**

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

[FR Doc. E9–5290 Filed 3–10–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2008–0671; Directorate Identifier 2008–NM–017–AD; Amendment 39–15796; AD 2009–02–06]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, and –500 series airplanes. This AD requires repetitive high frequency eddy current inspections for cracking of the 1.04-inch nominal diameter wire penetration hole in the frame and frame reinforcement, between stringers S–20 and S–21, on both the left and right sides of the airplane, and related investigative and corrective actions if necessary. This AD results from reports of cracking in the frame, or in the frame and frame reinforcement, common to the 1.04-inch nominal diameter wire penetration hole intended for wire routing. We are issuing this AD to detect and correct cracking in the fuselage frames and frame reinforcements, which could reduce the structural capability of the frames to sustain limit loads, and result in cracking in the fuselage skin and subsequent rapid depressurization of the airplane.

**DATES:** This AD is effective April 15, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of April 15, 2009.

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

**Examining the AD Docket**

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

**FOR FURTHER INFORMATION CONTACT:** Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Boeing Model 737–300, –400, and –500 series airplanes. That NPRM was published in the **Federal Register** on June 24, 2008 (73 FR 35598). That NPRM proposed to require repetitive high frequency eddy current (HFEC) inspections for cracking of the 1.04-inch nominal diameter wire penetration hole in the frame and frame reinforcement, between stringers S–20 and S–21, on both the left and right sides of the airplane, and related investigative and corrective actions if necessary.

**Comments**

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

**Request To Revise Paragraph (h) To Correct References to Parts of the Service Bulletin**

KLM Royal Dutch Airlines (KLM) requests that we revise paragraph (h) of the NPRM to correct the references to certain parts of Boeing Alert Service Bulletin 737–53A1279, dated December 18, 2007 (''the service bulletin''), for doing certain actions. KLM points out that paragraph (h) of the NPRM refers to Part 3 of the service bulletin for doing the repair and to Part 4 of the service bulletin for doing the preventative modification. KLM further points out that Part 4 of the service bulletin concerns repeat inspections, not the preventative modification. The preventative modification is provided in Part 5 of the service bulletin.

We agree with the commenter. It was our intention to refer to Part 5 of the service bulletin for doing the preventative modification provided in paragraph (h) of the NPRM. Therefore, we have revised paragraph (h) of this AD to refer to Part 5 of the service bulletin for doing the preventative modification.

**Request To Revise Paragraph (e) To Clarify Compliance Times**

KLM requests that we revise paragraph (e) of the NPRM to refer to paragraph 1.E., ''Compliance,'' of the service bulletin. KLM asserts that adding a reference to the location of the compliance times in the service bulletin would be helpful.

We do not agree to revise paragraph (e) of this AD. A reference to paragraph 1.E., ''Compliance,'' of Boeing Service Bulletin 737–53A1279, dated December 18, 2007, is already provided in paragraph (g) of this AD.

**Conclusion**

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

**Costs of Compliance**

We estimate that this AD affects 616 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

| Action | Work hours | Parts | Cost per product | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|
| Inspection | Between 6 and 8 (depending on airplane configuration), per inspection cycle. | $0 | Between $480 and $640, per inspection cycle. | 616 | Between $295,680 and $394,240, per inspection cycle. |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2009–02–06 Boeing:** Amendment 39–15796. Docket No. FAA–2008–0671; Directorate Identifier 2008–NM–017–AD.

**Effective Date**

(a) This airworthiness directive (AD) is effective April 15, 2009.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–53A1279, dated December 18, 2007.

**Unsafe Condition**

(d) This AD results from reports of cracking in the frame, or in the frame and frame reinforcement, common to the 1.04-inch nominal diameter wire penetration hole intended for wire routing. We are issuing this AD to detect and correct cracking in the fuselage frames and frame reinforcements, which could reduce the structural capability of the frames to sustain limit loads, and result in cracking in the fuselage skin and subsequent rapid depressurization of the airplane.

**Compliance**

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

**Service Bulletin Reference Paragraph**

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1279, dated December 18, 2007.

(1) The ''condition'' column of paragraph 1.E. of Boeing Alert Service Bulletin 737–53A1279, dated December 18, 2007, refers to total flight cycles ''at the date given on this service bulletin.'' This AD applies to the airplanes with the specified total flight cycles as of the effective date of this AD.

(2) Where the service bulletin specifies to contact Boeing for instructions for removing damage and repairing cracking: Before further flight, remove the damage or repair the cracking using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(3) Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include that requirement.

**Inspections, Related Investigative and Corrective Actions**

(g) At the applicable time specified in paragraph 1.E., ''Compliance,'' of the service bulletin, except as specified by paragraph (f)(1) of this AD: Do a high frequency eddy current (HFEC) surface inspection or an HFEC hole/edge inspection for cracking of the 1.04-inch nominal diameter wire penetration hole in the frame and frame reinforcement, between stringer S–20 and S–21; and do all applicable related investigative and corrective actions; by accomplishing all the actions specified in the Accomplishment Instructions of the service bulletin, except as specified by paragraphs (f)(2) and (f)(3) of this AD. Do all applicable related investigative and corrective actions before further flight. Thereafter, repeat the inspections at the applicable intervals specified in paragraph 1.E. of the service bulletin.

**Terminating Action**

(h) Doing the repair in Part 3 or the preventative modification in Part 5 of the service bulletin terminates the repetitive inspection requirements of this AD.

**Alternative Methods of Compliance (AMOCs)**

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Wayne Lockett, Aerospace Engineer, Airframe Branch, ANM–120S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6447; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

**Material Incorporated by Reference**

(j) You must use Boeing Alert Service Bulletin 737–53A1279, dated December 18, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

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

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

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

Issued in Renton, Washington, on January 9, 2009.

**Stephen P. Boyd,**

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

[FR Doc. E9–4734 Filed 3–10–09; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 30654; Amdt. No 3310]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient

use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective March 11, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 11, 2009.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to:*http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

*Availability*—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *http://www.nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Divisions, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPS, Takeoff Minimums and/or ODPS. The complete regulators description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. The advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary.

This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the associated Takeoff Minimums and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPS and Takeoff Minimums and ODPS, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPS contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPS and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedures before adopting these SIAPS, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26,1979) ; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on February 20, 2009.

**John M. Allen,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0902 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

*Effective 12 MAR 2009*

Wrangell, AK, Wrangell, GPS–A, Orig, CANCELLED

Parkersburg, WV, Mid-Ohio Valley Regional, RNAV (GPS) RWY 3, Amdt 1

Parkersburg, WV, Mid-Ohio Valley Regional, RNAV (GPS) RWY 21, Amdt 1

Parkersburg, WV, Mid-Ohio Valley Regional, RNAV (GPS) Y RWY 3, Orig, CANCELLED

Parkersburg, WV, Mid-Ohio Valley Regional, RNAV (GPS) Y RWY 21, Orig, CANCELLED
Parkersburg, WV, Mid-Ohio Valley Regional, Takeoff Minimums and Obstacle DP, Amdt 2
Parkersburg, WV, Mid-Ohio Valley Regional, VOR RWY 21, Amdt 17

*Effective 09 APR 2009*

Courtland, AL, Lawrence County, GPS RWY 13, Orig, CANCELLED
Courtland, AL, Lawrence County, RNAV (GPS) RWY 13, Orig
Courtland, AL, Lawrence County, RNAV (GPS) RWY 31, Orig
Courtland, AL, Lawrence County, Takeoff and Minimums and Obstacle DP, Orig
Tuskegee, AL, Moton Field Muni, Takeoff and Minimums and Obstacle DP, Orig
Cedartown, GA, Polk County Airport-Cornelius Moore Field, Takeoff Minimums and Obstacle DP, Orig
West Milford, NJ, Greenwood Lake, VOR RWY 6, Orig, CANCELLED
South Bethlehem, NY, South Albany, Takeoff Minimums and Obstacle DP, Orig
Columbus, OH, Darby Dan, NDB–A, Orig, CANCELLED
Lancaster, PA, Lancaster, RNAV (GPS) RWY 8, Amdt 1A
Lafayette, TN, Lafayette Muni, NDB RWY 19, Amdt 3
Lafayette, TN, Lafayette Muni, RNAV (GPS) RWY 19, Orig
Lafayette, TN, Lafayette Muni, Takeoff Minimums and Obstacle DP, Orig
Lawrenceburg, TN, Lawrenceburg-Lawrence County, Takeoff Minimums and Obstacle DP, Orig
Warrenton, VA, Warrenton-Fauquier, Takeoff Minimums and Obstacle DP, Orig

*Effective 07 MAY 2009*

Lompoc, CA, Lompoc, RNAV (GPS) RWY 25, Amdt 1
Leesburg, FL, Leesburg Intl, Takeoff Minimums and Obstacle DP, Amdt 3
Plant City, FL, Plant City, Takeoff Minimums and Obstacle DP, Orig
Tampa, FL, Tampa Intl, ILS or LOC RWY 18R, Amdt 4A
Carrollton, GA, West Georgia Regional-O V Gray Field, Takeoff Minimums and Obstacle DP, Orig
Bunkie, LA, Bunkie Muni, RNAV (GPS) RWY 18, Orig
Bunkie, LA, Bunkie Muni, RNAV (GPS) RWY 36, Orig
Bunkie, LA, Bunkie Muni, Takeoff Minimums and Obstacle DP, Orig
Bunkie, LA, Bunkie Muni, VOR/DME–A, Amdt 6
Fryeburg, ME, Eastern Slopes Regional, GPS RWY 32, Orig, CANCELLED
Fryeburg, ME, Eastern Slopes Regional, RNAV (GPS) RWY 32, Orig
Saginaw, MI, Saginaw County H.W. Browne, NDB RWY 27, Orig-A, CANCELLED
Brainerd, MN, Brainerd Lakes Rgnl, RNAV (GPS) RWY 34, Orig
Grand Marais, MN, Grand Marais/Cook County, GPS RWY 27, Orig, CANCELLED
Grand Marais, MN, Grand Marais/Cook County, RNAV (GPS) RWY 27, Orig
Grand Rapids, MN, Grand Rapids/Itasca Co-Gordon Newstrom Fld, Takeoff Minimums and Obstacle DP, Amdt 4
Helena, MT, Helena Regional, RNAV (GPS) X RWY 27, Amdt 1A
Helena, MT, Helena Regional, RNAV (GPS) Y RWY 9, Amdt 1A
Jacksonville, NC, Albert J Ellis, ILS OR LOC RWY 5, Amdt 8A
Taos, NM, Taos Rgnl, NDB RWY 4, Amdt 1A, CANCELLED
Battle Mountain, NV, Battle Mountain, Takeoff Minimums and Obstacle DP, Amdt 3
Battle Mountain, NV, Battle Mountain, VOR/DME RWY 3, Amdt 6
Seneca Falls, NY, Finger Lakes Rgnl, Takeoff Minimums and Obstacle DP, Orig
Ada, OK, Ada Muni, GPS RWY 17, Orig-B, CANCELLED
Ada, OK, Ada Muni, GPS RWY 35, Orig-C, CANCELLED
Ada, OK, Ada Muni, RNAV (GPS) RWY 17, Orig
Ada, OK, Ada Muni, RNAV (GPS) RWY 35, Orig
Ada, OK, Ada Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Corry, PA, Corry-Lawrence, Takeoff Minimums and Obstacle DP, Orig
McAllen, TX, McAllen Miller Intl, RNAV (GPS) RWY 31, Amdt 1A
Wallops Island, VA, Wallops Flight Facility, Takeoff Minimums and Obstacle DP, Orig
Seattle, WA, Boeing Field/King County Intl, RNAV (GPS) Y RWY 13R, Orig-C
Seattle, WA, Boeing Field/King County Intl, RNAV (RNP) Z RWY 13R, Orig-B
Monroe, WI, Monroe Muni, Takeoff Minimums and Obstacle DP, Amdt 2

[FR Doc. E9–4496 Filed 3–10–09; 8:45 am]
**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### 14 CFR Part 97

**[Docket No. 30655; Amdt. No. 3311]**

### Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective March 11, 2009. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 11, 2009.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Availability—All SIAPs are available online free of charge. Visit nfdc.faa.gov to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2.The FAA Regional Office of the region in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Harry J. Hodges, Flight Procedure Standards Branch (AFS–420) Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (*Mail Address:* P.O. Box 25082 Oklahoma City, OK. 73125) *telephone:* (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (FDC)/Permanent

Notice to Airmen (P–NOTAM), and is incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of Title 14 of the Code of Federal Regulations.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAP and the corresponding effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP as modified by FDC/P–NOTAMs.

The SIAPs, as modified by FDC P–NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on February 20, 2009.

**John M. Allen,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

■ Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, 14 CFR part 97, is amended by amending Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs,

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 01/23/09 | NY | CANANDAIGUA | CANANDAIGUA | 9/2878 | THIS NOTAM PUBLISHED IN TL09–06 IS HEREBY RESCINDED IN ITS ENTIRETY. RNAV (GPS) RWY 13, ORIG. |
| 02/09/09 | IN | GREENSBURG | GREENSBURG-DECATUR COUNTY. | 9/4397 | RNAV (GPS) RWY 36, ORIG. |
| 02/09/09 | IN | GREENSBURG | GREENSBURG-DECATUR COUNTY. | 9/4398 | VOR–A, AMDT 2B. |
| 02/05/09 | CA | HAWTHORNE | JACK NORTHROP FIELD/HAWTHORNE MUNI. | 9/4403 | VOR OR GPS RWY 25, AMDT 15B. |
| 02/05/09 | WA | OAK HARBOR | WES LUPIEN | 9/4405 | RNAV (GPS) RWY 7, AMDT 2. |
| 02/05/09 | WA | OAK HARBOR | WES LUPIEN | 9/4414 | RADAR–1, AMDT 1. |
| 02/09/09 | IN | GREENSBURG | GREENSBURG-DECATUR COUNTY. | 9/4453 | TAKEOFF MINIMUMS AND (OBSTACLE) DP, AMDT 1. |
| 02/05/09 | WA | OAK HARBOR | WES LUPIEN | 9/4454 | TAKEOFF MINIMUMS AND (OBSTACLE) DP, ORIG. |
| 02/06/09 | NY | LE ROY | LE ROY | 9/4664 | VOR OR GPS–A, ORIG. |
| 02/06/09 | NY | ROCHESTER | GREATER ROCHESTER INTL | 9/4803 | ILS OR LOC RWY 22, AMDT 6A. |
| 02/09/09 | PR | PONCE | MERCEDITA | 9/4996 | RNAV (GPS) RWY 12, ORIG. |
| 02/10/09 | CA | CARLSBAD | MC CLELLAN-PALOMAR | 9/5094 | ILS OR LOC RWY 24, AMDT 8C. |
| 02/10/09 | CA | CARLSBAD | MC CLELLAN-PALOMAR | 9/5095 | RNAV (GPS) RWY 24, AMDT 1. |
| 02/11/09 | CA | LOS ANGELES | LOS ANGELES INTL | 9/5297 | ILS OR LOC RWY 7R, AMDT 6. |
| 02/12/09 | PA | PHILADELPHIA | PHILADELPHIA INTL | 9/5433 | ILS OR LOC RWY 17, AMDT 7. |
| 02/12/09 | CA | ARCATA/EUREKA | ARCATA | 9/5477 | ILS OR LOC/DME RWY 32, AMDT 1D. |
| 02/13/09 | CT | HARTFORD | HARTFORD-BRAINARD | 9/5768 | LDA RWY 2, AMDT 1E. |
| 02/17/09 | NV | ELY | ELY ARPT-YELLAND FLD | 9/6034 | RNAV (GPS) RWY 18, ORIG–B. |

| FDC date | State | City | Airport | FDC No. | Subject |
|---|---|---|---|---|---|
| 02/18/09 | IA | ANKENY | ANKENY REGIONAL | 9/6097 | RNAV (GPS) RWY 22, ORIG. |
| 02/18/09 | IA | ANKENY | ANKENY REGIONAL | 9/6100 | RNAV (GPS) RWY 18, ORIG. |
| 02/18/09 | UT | OGDEN | OGDEN-HINCKLEY | 9/6135 | ILS OR LOC RWY 3, AMDT 4A. |
| 02/18/09 | AK | DILLINGHAM | DILLINGHAM | 9/6173 | LOC/DME RWY 19, AMDT 6. |

[FR Doc. E9–4498 Filed 3–10–09; 8:45 am]
BILLING CODE 4910–13–P

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1500

### Children's Products Containing Lead; Final Rule; Procedures and Requirements for a Commission Determination or Exclusion

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** The Consumer Product Safety Commission (Commission or CPSC) is issuing a final rule on procedures and requirements on requests for: a Commission determination that a commodity or class of materials or a specific material or product does not exceed the lead content limits specified under section 101(a) of the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110–314; or an exclusion of a commodity or class of materials or a specific material or product under section 101(b)(1) of the CPSIA, that exceeds the lead content limits under section 101(a) of the CPSIA, but which will not result in the absorption of any lead into the human body nor have any other adverse impact on public health or safety.

**DATES:** *Effective Date:* This regulation becomes effective on March 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kristina Hatlelid, PhD, M.P.H., Directorate for Health Sciences, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; e-mail *khatlelid@cpsc.gov;* telephone 301–504–7254.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

The CPSIA establishes specific limits on lead in children's products. Section 101(a) of the CPSIA provides that after February 10, 2009, products designed or intended primarily for children 12 years of age or younger may not contain more than 600 ppm of lead by weight for any part of the product. After August 14, 2009, products designed or intended primarily for children 12 years of age or younger cannot contain more than 300 ppm of lead by weight for any part of the product. On August 14, 2011, the limit will be further reduced to 100 ppm unless the Commission determines that it is not technologically feasible to have this lower limit. Paint, coatings, or electroplating may not be considered a barrier that would make the lead content of a product inaccessible to a child or prevent the absorption of any lead in the human body through normal and reasonably foreseeable use and abuse of the product.

Consumer products designed or intended primarily for children 12 years of age or younger that do not contain more than 600 ppm or 300 ppm total lead by weight (as of August 14, 2009), are not considered to be banned hazardous substances under the Federal Hazardous Substances Act (FHSA). Children's products that meet the lead limits however, are still subject to the testing requirements of section 102 of the CPSIA (codified at section 14 of the Consumer Product Safety Act (CPSA)), unless specifically relieved of those requirements through Commission lead content determinations.[1]

Children's products that contain more than 600 ppm or 300 ppm lead in any component part (as of August 14, 2009) are considered to be banned hazardous substances under the FHSA. However, section 101(b)(1) of the CPSIA provides that the Commission may, by regulation, exclude a specific product or material that exceeds the lead limits established for children's products under section 101(a) of the CPSIA if ''the Commission, after notice and a hearing, determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product or material will neither: (a) Result in the absorption of any lead into the human body, taking into account normal and reasonably foreseeable use and abuse of such product by a child, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product; nor (b) have any other adverse impact on public health or safety.'' Children's products that have lead containing accessible parts that are specifically excluded under this section would generally not be subject to the testing and certification requirements of section 102 of the CPSIA for lead content.

[1] On February 9, 2009, the Commission published a stay of enforcement of testing and certification requirements of certain provisions of subsection 14(a) of the CPSA as amended by section 102(a) of the CPSIA until February 10, 2010. 74 FR 6396. However, absent a Commission determination that a commodity or class of materials or a specific material or product does not exceed the lead content limits specified under section 101(a) of CPSIA, such products will be subject to the testing requirements under section 102 of the CPSIA after February 10, 2010.

#### B. Statutory Authority

Section 3 of the CPSIA grants the Commission general rulemaking authority to issue regulations, as necessary, to implement the CPSIA. There may be certain commodities or classes of products or materials that inherently do not contain lead or contain lead at levels that would not exceed the lead content limits under section 101(a) of the CPSIA. Accordingly, the Commission will exercise its authority under section 3 of the CPSIA to make determinations regarding such commodities or classes of material or products that do not and would not exceed the lead limits of section 101(a) of the CPSIA.

In addition, the Commission may exercise its authority under section 101(b)(1) of the CPSIA to issue any regulations on a specific product or material that exceeds the lead limits established for children's products under section 101(a) of the CPSIA if the Commission, after notice and a hearing, determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product or material will neither: (a) result in the absorption of any lead into the human body, taking into account normal and reasonably foreseeable use and abuse of such product by a child, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product; nor (b) have any other adverse impact on public health or safety.

#### C. Notice of Proposed Rulemaking

On January 15, 2009, the Commission published a notice of proposed rulemaking on procedures and requirements in the **Federal Register** (74 FR 2428) for future Commission determinations regarding certain materials or products that do not and would not exceed the lead limits. In the

same issue of the **Federal Register** (74 FR 2433), the Commission published another notice of proposed rulemaking describing preliminary determinations that specific materials including certain natural materials and certain metal and alloys do not and would not exceed the lead limits.

For materials or products that inherently do not contain lead or contain lead at levels that would not exceed the lead content limits under section 101(a) of the CPSIA, the Commission proposed procedures and requirements by which requests for determinations on materials or products will be reviewed. The Commission emphasized that it would concentrate its efforts on evaluating those materials that are commodity-like, are used across industry in a number of applications, and are subject to detailed consensus standards related to lead content and other pertinent properties and that review of individual products of a single manufacturer would be assigned a low priority.

For materials or products that exceed the lead content limits in section 101(a) of the CPSIA, section 101(b) of the CPSIA requires the Commission to provide notice and a hearing to consider and evaluate the best-available, objective, peer-reviewed, scientific data before promulgating a rule on exclusions. Given the highly technical nature of the information sought—peer-reviewed, scientific data—the Commission stated its intention to provide notice and comment procedures based on written submissions, rather than an oral hearing. 74 FR 2430. Accordingly, the Commission proposed procedures and requirements which required that a request for exclusion must be supported by the best-available, objective, peer-reviewed, scientific evidence, such as test results indicating how much lead is present in the product, how much lead comes out of the product and the conditions under which that may happen, and information relating to a child's interaction, if any, with the product.

### D. Discussion of Comments to the Proposed Rule

Several comments were received in response to the proposed rule.[2] All of the commenters generally express support for the proposed procedures and requirements. Additional comments are addressed below.

[2] There were other comments that were submitted but that did not address any issues related to this rule. Accordingly, they will not be addressed here.

*Standard for Exclusions*

The ATV Companies [3] question the Commission's statement regarding the difficult standard that needs to be met for exclusions under section 101(b)(1) of the CPSIA, suggesting that possibly no petition might qualify for an exclusion and citing recent statements from a Senate conferee suggesting that the exclusion is appropriate for use in this context. They assert that exclusions provided for by Congress should not be rendered meaningless and that Congress must have intended to provide relief for some accessible components when evaluated in the context of a child's reasonably foreseeable use and abuse of a product, and that certain ATV components fall within the scope of such an exclusion.

The Commission believes that the clear language of the statute which provides that it must determine, on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product or material will not ''result in the absorption of *any* lead into the human body * * *'' (emphasis added) does not allow the Commission any discretion to consider materials or products whereby exposure to the lead-containing elements under reasonably foreseeable use and abuse conditions would result in any absorption of lead, including through swallowing, mouthing, breaking, and the aging of the product. While Congress focused on ingestion by using the words ''swallowing, mouthing, and breaking,'' the use or abuse of a children's product containing lead in excess of the lead limits could lead to the absorption of lead from hand to mouth contact, as the Commission has recognized for many years. Had Congress not included the use of the word ''any'', the Commission, relying, *inter alia,* on the advice of its toxicologists, engineers and human factors experts, would have had the authority to have considered whether the requirement could be met if there were some low amount of absorption of lead, resulting in ''no meaningful increase'' in children's blood lead levels, thereby constituting a negligible risk. While there is no established threshold for adverse effects of lead, peer-reviewed scientific literature suggests ways of assessing the risk to children given child-specific exposure routes, and taking into account the current knowledge of lead toxicology. Models for such assessments have been advanced recently by other federal and state agencies. *See e.g., Development of Health Criteria for School Site Risk Assessment Pursuant To Health and Safety Code Section 901(G): Child-Specific Benchmark Change in Blood Lead Concentration for School Site Risk Assessment, Final Report April 2007, Integrated Risk Assessment Branch, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency.* Physiologically, if there is absorption of lead into the human body, blood lead levels will increase, but whether that has significance from a health standpoint remains a question. However, the addition of the word ''any'' made it explicit that Congress had already made this risk assessment and legislated that any absorption of lead from products or materials containing lead above the content limits established by Congress, no matter how insignificant, would be deemed unacceptable. The exclusion is not rendered meaningless, as conceivably some product could be over the lead limit but designed in a way to avoid hand to mouth exposure or some other absorption pathway in children of a certain age. Accordingly, the Commission must follow the clear language of the statute and cannot grant any exclusion that does not meet this requirement.

[3] The ATV Companies are American Honda Motor Co., American Suzuki Motor Corp., Arctic Cat Inc., Bombardier Recreational Products Inc., Kawasaki Motors Corp., U.S.A., Polaris Industries Inc., and Yamaha Motor Corp., U.S.A.

*Other Considerations for Exclusion Requests*

The United States Association of Importers of Textiles and Apparel (USA–ITA) supports the proposed procedures for requesting exclusions or determinations for other materials that may be included in apparel, such as rhinestone beads. The Fashion Jewelry Trade Association (FJTA) agrees that an oral hearing is not required for the Commission to act on exclusions and requests expedited action on crystals. For proposed exclusions, it states that only relevant exposure conditions should be considered, including consideration of the child's age. The American Apparel & Footwear Association (AAFA) *et al.* assert that the Commission should rely on an extractable lead test rather than the total lead content in its evaluations for proposed exclusions and requirements.

FJTA requests that, in the absence of published best-available, objective, peer-reviewed scientific evidence, test data using accepted published test methods should be considered reliable information. It also opposes the requirement that a request for exclusion should include evidence that may be unfavorable to the requestor, because it claimed that the purpose of the public

comment process is to elicit countervailing information.

The standard for lead established by the CPSIA is based on total lead content of component parts of children's products. However, section 101(b)(1) of the CPSIA provides that the Commission may exclude a specific product or material from the lead content limits if the Commission determines lead in such product or material will not result in the absorption of any lead into the body, taking into account normal and reasonably foreseeable use and abuse by a child based on factors specific to the product or material and to the children using the product. Therefore, under this section, exclusion of a product or material from the lead content limits would necessarily be based on factors other than the total lead content. A request should contain as much credible scientific evidence as is available, including any test data using established test methods particularly if the requestor is asking the Commission to consider estimates of extractable lead in reaching conclusions about the absorption of lead in the child's body. However, such a submission will be reviewed by staff to determine the veracity and applicability of the studies to the product or material in question and whether, in consideration with other available evidence, it supports a showing that lead in such product or material would not result in the absorption of any lead into the body.

The Commission will continue to require that a request for exclusion be accompanied by information unfavorable to the request, if reasonably available. In addition, the Commission will require that a request for a determination be accompanied by information unfavorable to the request, if reasonably available and if it accurately reflects the product's lead content. Therefore, this final rule requires the production of ''representative'' data to ensure that the Commission has relevant data reflecting the actual likely lead content of the product or class of products. To the extent that such information is reasonably available to the requestor, particularly if the information was produced by or presented to the requestor, it must be provided to the Commission to ensure that all available information and data is reviewed in determining whether an exclusion or determination is appropriate based on the totality of the evidence.

*Process Timeline and Treatment of Confidential Information*

AAFA requests that the Commission articulate a timeline for the process, indicate how requests for exclusion will be disclosed, and provide guidelines on how business-confidential information will be protected. The Office of the California Attorney General (CA AG) also requests that the Commission continue to post applications and supporting documents and, where materials are withheld from the public, provide the reasons for withholding the information.

As part of this rulemaking, the Commission has specified a timeline for processing requests for determinations and exclusions. The Commission will continue its practice of providing public access to requests and supporting materials received from the requestors as well as comments from the public. With respect to confidential materials, the Commission will note in the public docket where such materials are withheld from the public docket. Section 6(a)(2) of the CPSA, 15 U.S.C. 2055(a)(2), and the regulations promulgated under 16 CFR 1015.18 and 1015.19 govern requests for confidential treatment of information and requests for disclosure of such information. These procedures are applicable to any such requests received in these proceedings.

*Additional Requirements for Determinations*

The CA AG states that the Commission should be explicit in the regulation, not just the preamble, that a determination that the lead content of a material or product is below the lead limits does not relieve the material or product from complying with the applicable lead limits. In addition, the CA AG suggests additional information to be obtained from applicants including: (1) Data or information on the facilities and manufacturing processes used to manufacture the material or product, and any materials used in the product; and (2) an assessment of the likelihood or lack thereof that the use of leaded materials in a facility will result in lead contamination of a material or product that ordinarily does not contain lead. Consumers Union, *et al.*[4] state that products from the market should be tested with reasonable frequency to act as an effective deterrent.

The Commission has already indicated that all children's products subject to a determination must comply with the lead limit in its Statement of Commission Enforcement Policy on Section 101 Lead Limits, dated February 6, 2009, and includes in the regulation the requirement for compliance with the CPSIA lead limits. The Commission had also indicated that a request for a determination would need to include information on ''manufacturing processes through which lead may be introduced in to the product * * * and why the assessment of the manufacturing processes strongly supports a conclusion that they would not be a source of lead contamination.'' However, in response to these comments, the Commission will also clarify that the procedures and requirements for determinations will include a request for an evaluation of facilities and manufacturing processes as well as a request for an assessment of whether lead uses in manufacturing facilities could possibly result in lead contamination of a material or product. With respect to market testing, compliance and enforcement activities, including market testing, have always been and continue to be essential to the Commission's mission. Moreover, even when a particular product or material has been relieved of the requirement to undergo testing and certification under section 102 of the CPSIA, manufacturers and importers continue to be responsible for verifying that the material or product has not been altered or modified, or experienced any change in the processing, facility or supplier conditions that could impart lead into the material or product to ensure that it meets the statutory lead levels at all times.

**E. Procedures and Requirements**

*1. § 1500.89—Lead Content Level Determinations*

Any request for a Commission determination that a specific material or product contains no lead or a lead level below the applicable statutory limit must be supported by objectively reasonable and representative test results or other scientific evidence showing that the product or material does not, and would not, exceed the lead limit specified in the request. A justification submitted by an interested party for a determination must include:

- A detailed description of the product or material and how it is used by the child;

[4] Consumers Union, Consumer Federation of America, Kids in Danger, Public Citizen, and the U.S. Public Interest Research Group filed joint comments. In their comments, they expressed satisfaction with the Commission's process for determining exclusions based on best available, objective, peer reviewed, scientific evidence that the product or material cannot result in the absorption of any lead in the human body as discussed above.

• Representative data on the lead content of parts of the product or the materials used in the production of a product;

• All relevant data or information on manufacturing processes through which lead may be introduced into the product or material;

• An assessment of the likelihood or lack thereof that the manufacturing processes will result in lead contamination of a material or product that ordinarily does not contain lead;

• All relevant data or information on the facilities used to manufacture the material or product, and any other materials used in the product;

• An assessment of the likelihood or lack thereof that the use of leaded materials in a facility will result in lead contamination of a material or product that ordinarily does not contain lead;

• Any other information relevant to the potential for the lead content of the product or material to exceed the statutory lead limit specified in the request, that is 600 ppm, 300 ppm, or 100 ppm, as applicable;

• Detailed information on the relied upon test methods for measuring lead content of products or materials, including the type of equipment used and any other techniques employed and a statement as to why the data is representative of the lead content of such products or materials generally; and

• Any data or information that is unfavorable to the request that is reasonably available to the requestor.

MSDS sheets will not be sufficient to satisfy the representative testing criteria because they do not show sufficient information regarding lead content. Rather, the showing necessary to obtain a determination must be based on objectively reasonable and representative testing of the material or product.

Upon receipt of a complete request for a determination, the Office of Hazard Identification and Reduction (EXHR) will assess the request to determine whether the product or material is one that does not contain lead in excess of the limits of section 101 of the CPSIA. EXHR will make an initial recommendation within thirty (30) calendar days to the extent practicable; EXHR may request an extension from the Executive Director of the CPSC, if necessary, to make its initial determination. A complete request is one that does not require additional information from the requestor for EXHR to make an initial recommendation to the Commission. If a request is submitted that is not complete, the Office of the Secretary shall notify the person submitting it, describe the deficiency, and explain that the request may be resubmitted when the deficiency is corrected. If EXHR's initial recommendation is to deny the request for a lead content determination, it will provide, in a staff memorandum to the Commission for ballot vote, the basis for the denial with sufficient detail for the Commission to make an informed decision that reasonable grounds for a determination are not presented. The Commission, by ballot vote, will render a decision on the staff's recommendation. The ballot vote and the staff memorandum will be posted on the CPSC Web site. Any determination by the Commission to grant a request will be published in the **Federal Register** for comment. If the Commission concludes that the request shall be denied, the requestor shall be notified in writing of the denial from the Office of the Secretary along with the official ballot results and the EXHR staff's memorandum of recommendations.

If the staff's initial recommendation is to grant the lead content determination, it will submit the basis for that recommendation to the Commission in a memorandum to be voted on by ballot, with sufficient detail for the Commission to make an informed decision that reasonable grounds for a determination are presented. If the notice of proposed rulemaking (NPR) is published, it will invite public comment in the **Federal Register**. EXHR will review and evaluate any comments and supporting documentation before making its final recommendation to the Commission for final agency action, by staff memorandum submitted to the Commission. If the Commission, after review of the staff's final recommendation, determines that a material or product does not and would not exceed the lead content limits, it will decide by ballot vote on whether to publish a final rule in the **Federal Register**. Although such materials or products would be relieved of the testing and certification requirements in section 102 of the CPSIA, manufacturers and importers would continue to be responsible for verifying that the material or product has not been altered or modified, or experienced any change in the processing, facility or supplier conditions that could impart lead into the material or product. These materials or products must still meet the statutory lead level requirements at all times. The Commission will obtain and test products in the marketplace to assure that this remains the case and will take appropriate enforcement action in situations where that is not the case and could take additional regulatory action if repeated enforcement actions call into question the original determination. In addition, all materials or products must still meet any other applicable consumer product safety rules as defined in the CPSA or similar rules, bans standards, or regulations under any other Act enforced by the Commission.

*2. § 1500.90—Exclusion of a Material or Product Exceeding Lead Content Limit*

For products that exceed the lead content limits prescribed in section 101(a) of the CPSIA, any requests seeking an exclusion must submit documentation based on the best-available, objective, peer-reviewed, scientific evidence showing that lead in such product or material will not result in the absorption of any lead into the body, taking into account normal and reasonably foreseeable use and abuse by a child, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product, nor have any other adverse impact on health or safety. This is the standard by which the Commission will review such requests for exclusions. A justification submitted by an interested party for an exclusion should provide:

• A detailed description of the product or material and how it is used by a child;

• Representative data on the lead content of parts of the product or materials used in the production of a product;

• All relevant data or information on manufacturing processes through which lead may be introduced into the product or material;

• Any other information relevant to the potential for lead content of the product or material to exceed the CPSIA lead limits that is reasonably available to the requestor;

• Detailed information on the relied upon test methods for measuring lead content of products or materials including the type of equipment used or any other techniques employed and a statement as to why the data is representative of the lead content of such products or materials generally;

• An assessment of the manufacturing processes which strongly supports a conclusion that they would not be a source of lead contamination of the product or material, if relevant;

• Best-available, objective, peer-reviewed, scientific evidence to support a request for an exclusion that demonstrates that the normal and reasonably foreseeable use and abuse activity by a child (including

swallowing, mouthing, breaking, or other children's activities) and the aging of the material or product for which exclusion is sought, will not result in the absorption of any lead into the body, nor have any other adverse impact on health or safety. This literature should support a request for exclusion that addresses how much lead is present in the product, how much lead comes out of the product, and the conditions under which that may happen and information relating to a child's interaction, if any, with the product; and

• Best-available, objective, peer-reviewed, scientific evidence that is unfavorable to the request that is reasonably available to the requestor.

Upon receipt of a complete request for an exclusion, the Office of Hazard Identification and Reduction (EXHR) will assess the request on the basis of its review of the submitted materials, that the normal and reasonably foreseeable use and abuse activity by a child (including swallowing, mouthing, breaking, or other children's activities) and the aging of the material or product for which exclusion is sought, will not result in the absorption of any lead into the human body, nor have any other adverse impact on public health or safety, and make an initial recommendation within thirty (30) calendar days to the extent practicable. EXHR may request an extension from the Executive Director of the CPSC, if necessary, to make its initial recommendation. A complete request is one that does not require additional information from the requestor for EXHR to make an initial recommendation to the Commission. If a request is submitted that is not complete, the Office of the Secretary shall notify the person submitting it, describe the deficiency, and explain that the request may be resubmitted when the deficiency is corrected.

If EXHR's initial recommendation is to deny the request for an exclusion, it will provide, in a staff memorandum to the Commission, submitted to the Commission for ballot vote, the basis for denial with sufficient detail for the Commission to make an informed decision that reasonable grounds for an exclusion are not presented. The Commission, by ballot vote, will render a decision on the staff's recommendation. The ballot vote and the staff memorandum will be posted on the CPSC Web site. Any determination by the Commission to grant a request will be published in the **Federal Register** for comment. If the Commission concludes that the request shall be denied, the requestor shall be notified in writing of the denial, from the Office of the Secretary along with the official ballot results and the EXHR staff's memorandum of recommendation.

If the staff's initial recommendation is to grant the exclusion, it will submit the basis for that recommendation to the Commission in a memorandum to be voted on by ballot, with sufficient detail for the Commission to make an informed decision that reasonable grounds for a determination are presented. If the notice of proposed rulemaking (NPR) is published, it will invite public comment in the **Federal Register**. EXHR will review and evaluate any comments and supporting documentation before making its final recommendation to the Commission, by staff memorandum submitted to the Commission for final agency action. If the Commission, after review of the staff's final recommendation, determines that an exclusion is supported by the evidence, it will by ballot vote decide on whether to publish a final rule in the **Federal Register**.

### F. Effect of Filing a Lead Content Determination or Exclusion Request

Under section 101(e) of the CPSIA, the filing of a request for a lead content determination or for an exclusion would not have the effect of automatically staying the effect of any provision or limit under the statutes and regulations enforced by the Commission. Unless issued in final form by the Commission after notice and comment, all CPSC requirements related to the lead content in the material or product would remain in full force and effect. However, the Commission's ability to exercise its enforcement discretion is not eliminated nor diminished.

### G. Impact on Small Businesses

Under the Regulatory Flexibility Act (RFA), when an agency issues a proposed rule, it generally must prepare an initial regulatory flexibility analysis describing the impact the proposed rule is expected to have on small entities. 5 U.S.C. 603. The RFA does not require a regulatory flexibility analysis if the head of the agency certifies that the rule will not have a significant effect on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of relieving certain materials or products from the testing requirements of section 102 of the CPSIA. The Commission preliminarily found that the proposed rule would not have a significant impact on a substantial number of small entities. The procedures and requirements would allow certain businesses, including small businesses, the ability to seek determinations and exclusions which would allow these entities to continue to manufacture their products without the continuing cost of testing the materials for the presence of lead. Based on the foregoing assessment, the Commission certifies that the rule issued today on procedures and requirements would not have a significant impact on a substantial number of small entities.

### H. Environmental Considerations

Generally, CPSC rules are considered to ''have little or no potential for affecting the human environment,'' and environmental assessments are not usually prepared for these rules (see 16 CFR 1021.5(a)). The rule on procedures and requirements is not expected to have an adverse impact on the environment, thus, the Commission concludes that no environment assessment or environmental impact statement is required in this proceeding.

### I. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state in clear language the preemptive effect, if any, of new regulations. The preemptive effect of regulations such as this proposal is stated in section 18 of the FHSA. 15 U.S.C. 1261n.

### J. Paperwork Reduction Act

The rule would require manufacturers to provide certain information along with any request for a Commission determination or exclusion. For this reason, the rule contains ''collection of information requirements'' as that term is used in the Paperwork Reduction Act, 44 U.S.C. 3501–3520. Therefore, the preamble to the proposed rule discussed the paperwork burden that may be incurred and specifically requested comments on the paper burden of the proposal. The agency has applied to OMB for a control number for this information collection, and it will publish a notice in the **Federal Register** providing the number when the agency receives approval from the Office of Management and Budget (OMB).

### K. Effective Date

The Administrative Procedure Act generally requires that a substantive rule be published not less than 30 days before its effective date, unless the agency finds for good cause shown, that a lesser time period is required. 5 U.S.C. 553(d)(3). Because the Commission recognizes the need for providing procedures and requirements for Commission determinations and exclusions expeditiously, for good cause

shown, the effective date is March 11, 2009.

**List of Subjects in 16 CFR Part 1500**

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

**L. Conclusion**

■ For the reasons stated above, the Commission amends chapter II of title 16 of the Code of Federal Regulations as follows:

## PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES: ADMINISTRATION AND ENFORCEMENT REGULATIONS

■ 1. The authority citation for part 1500 is revised to read as follows:

**Authority:** 15 U.S.C. 1261–1278, 122 Stat. 3016

■ 2. Add new §§ 1500.89 and 1500.90 to read as follows:

### § 1500.89 Procedures and requirements for determinations regarding lead content of materials or products under section 101(a) of the Consumer Product Safety Improvement Act.

(a) The Consumer Product Safety Improvement Act provides for specific lead limits in children's products. Section 101(a) of the CPSIA provides that by February 10, 2009, products designed or intended primarily for children 12 years of age or younger may not contain more than 600 ppm of lead. After August 14, 2009, products designed or intended primarily for children 12 years of age or younger cannot contain more than 300 ppm of lead. On August 14, 2011, the limit will be further reduced to 100 ppm, unless the Commission determines that this lower limit is not technologically feasible. Paint, coatings or electroplating may not be considered a barrier that would make the lead content of a product inaccessible to a child or prevent the absorption of any lead in the human body through normal and reasonably foreseeable use and abuse of the product.

(b) The Commission may, either on its own initiative or upon the request of any interested person, make a determination that a material or product does not contain leads levels that exceed 600 ppm, 300 ppm, or 100 ppm, as applicable.

(c) A determination by the Commission under paragraph (b) of this section that a material or product does not contain lead levels that exceed 600 ppm, 300 ppm, or 100 ppm, as applicable does not relieve the material or product from complying with the applicable lead limit as provided under paragraph(a) of this section.

(d) To request a determination under paragraph (b) of this section, the request must:

(1) Be e-mailed to *cpsc-os@cpsc.gov*. and titled ''Section 101 Request for Lead Content Determination.'' Requests may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814, or delivered to the same address.

(2) Be written in the English language.

(3) Contain the name and address, and e-mail address or telephone number, of the requestor.

(4) Provide documentation including:

(i) A detailed description of the product or material and how it is used by a child;

(ii) Representative data on the lead content of parts of the product or materials used in the production of a product;

(iii) All relevant data or information on manufacturing processes through which lead may be introduced into the material or product;

(iv) An assessment of the likelihood or lack thereof that the manufacturing processes will result in lead contamination of a material or product that ordinarily does not contain lead;

(v) All relevant data or information on the facilities used to manufacture the material or product, and any other materials used in the product;

(vi) An assessment of the likelihood or lack thereof that the use of leaded materials in a facility will result in lead contamination of a material or product that ordinarily does not contain lead;

(vii) Any other information relevant to the potential for lead content of the product or material to exceed the statutory lead limit specified in the request, that is 600 ppm, 300 ppm, or 100 ppm, as applicable;

(viii) Detailed information on the relied upon test methods for measuring lead content of products or materials including the type of equipment used or any other techniques employed and a statement as to why the data is representative of the lead content of such products or materials generally; and

(ix) Any data or information that is unfavorable to the request that is reasonably available to the requestor.

(e) Where a submission fails to meet all of the requirements of paragraph (d) of this section, the Office of the Secretary shall notify the person submitting it, describe the deficiency, and explain that the request may be resubmitted when the deficiency is corrected.

(f) Upon receipt of a complete request for a determination, the Office of Hazard Identification and Reduction (EXHR) will assess the request to determine whether the product or material is one that does not contain lead in excess of the limits as provided under paragraph (a) of this section. EXHR will make an initial recommendation within thirty (30) calendar days, to the extent practicable. EXHR may request an extension from the Executive Director of the CPSC, if necessary, to make its initial determination. A complete request is one that does not require additional information from the requestor for EXHR to make an initial recommendation to the Commission.

(g) Where the Office of Hazard Identification and Reduction's (EXHR) initial recommendation is to deny the request for a lead content determination, it will provide, in a staff memorandum to the Commission, submitted to the Commission for ballot vote, the basis for the denial with sufficient detail for the Commission to make an informed decision that reasonable grounds for a determination are not presented. The Commission, by ballot vote, will render a decision on the staff's recommendation. The ballot vote and the staff memorandum will be posted on the CPSC Web site. Any determination by the Commission to grant a request will be published in the **Federal Register** for comment. If the Commission concludes that the request shall be denied, the requestor shall be notified in writing of the denial from the Office of the Secretary along with the official ballot results and the EXHR staff's memorandum of recommendation.

(h) Where the Office of Hazard Identification and Reduction's (EXHR) initial recommendation is to grant the request for a lead content determination, it will submit the basis for that recommendation to the Commission in a memorandum to be voted on by ballot, with sufficient detail for the Commission to make an informed decision that reasonable grounds for a determination are presented. If the notice of proposed rulemaking (NPR) is published, it will invite public comment in the **Federal Register**. EXHR will review and evaluate any comments and supporting documentation before making its final recommendation to the Commission for final agency action, by staff memorandum submitted to the Commission. If the Commission, after review of the staff's final recommendation, determines that a material or product does not and would not exceed the lead content limits, it will decide by ballot vote, on whether to publish a final rule in the **Federal Register**.

(i) The filing of a request for a determination does not have the effect of staying the effect of any provision or limit under the statutes and regulations enforced by the Commission. Even though a request for a determination has

been filed, unless a Commission determination is issued in final form after notice and comment, materials or products subject to the lead limits under section 101 of the CPSIA must be tested in accordance with section 102 of the CPSIA, unless the testing requirement is otherwise stayed by the Commission.

**§ 1500.90 Procedures and requirements for exclusions from lead limits under section 101(b) of the Consumer Product Safety Improvement Act.**

(a) The Consumer Product Safety Improvement Act provides for specific lead limits in children's products. Section 101(a) of the CPSIA provides that by February 10, 2009, products designed or intended primarily for children 12 years of age or younger may not contain more than 600 ppm of lead. After August 14, 2009, products designed or intended primarily for children 12 years of age or younger cannot contain more than 300 ppm of lead. On August 14, 2011, the limit will be further reduced to 100 ppm, unless the Commission determines that this lower limit is not technologically feasible. Paint, coatings or electroplating may not be considered a barrier that would make the lead content of a product inaccessible to a child or prevent the absorption of any lead in the human body through normal and reasonably foreseeable use and abuse of the product.

(b) Section 101(b)(1) of the CPSIA provides that the Commission may exclude a specific product or material from the lead limits established for children's products under the CPSIA if the Commission, after notice and a hearing, determines on the basis of the best-available, objective, peer-reviewed, scientific evidence that lead in such product or material will neither:

(1) Result in the absorption of any lead into the human body, taking into account normal and reasonably foreseeable use and abuse of such product by a child, including swallowing, mouthing, breaking, or other children's activities, and the aging of the product; nor

(2) Have any other adverse impact on public health or safety.

(c) To request an exclusion from the lead limits as provided under paragraph (a) of this section, the request must:

(1) Be e-mailed to *cpsc-os@cpsc.gov.* and titled ''Section 101 Request for Exclusion of a Material or Product.'' Requests may also be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, Maryland 20814, or delivered to the same address.

(2) Be written in the English language.

(3) Contain the name and address, and e-mail address or telephone number, of the requestor.

(4) Provide documentation including:

(i) A detailed description of the product or material and how it is used by a child;

(ii) Representative data on the lead content of parts of the product or materials used in the production of a product;

(iii) All relevant data or information on manufacturing processes through which lead may be introduced into the product or material;

(iv) Any other information relevant to the potential for lead content of the product or material to exceed the CPSIA lead limits that is reasonably available to the requestor;

(v) Detailed information on the relied upon test methods for measuring lead content of products or materials including the type of equipment used or any other techniques employed and a statement as to why the data is representative of the lead content of such products or materials generally; and

(vi) An assessment of the manufacturing processes which strongly supports a conclusion that they would not be a source of lead contamination of the product or material, if relevant.

(5) Provide best-available, objective, peer-reviewed, scientific evidence to support a request for an exclusion demonstrating that the normal and reasonably foreseeable use and abuse activity by a child (including swallowing, mouthing, breaking, or other children's activities) and the aging of the material or product for which exclusion is sought, will not result in the absorption of any lead into the human body, nor have any other adverse impact on public health or safety. This literature should support a request for exclusion that addresses how much lead is present in the product, how much lead comes out of the product, and the conditions under which that may happen and information relating to a child's interaction, if any, with the product.

(6) Provide best-available, objective, peer-reviewed, scientific evidence that is unfavorable to the request that is reasonably available to the requestor.

(d) Where a submission fails to meet all of the requirements of paragraph (c) of this section, the Office of the Secretary shall notify the person submitting it, describe the deficiency, and explain that the request may be resubmitted when the deficiency is corrected.

(e) Upon receipt of a complete request for an exclusion, the Office of Hazard Identification and Reduction (EXHR) will assess the request to determine whether, on the basis of its review of the submitted materials, that the normal and reasonably foreseeable use and abuse activity by a child (including swallowing, mouthing, breaking, or other children's activities) and the aging of the material or product for which exclusion is sought, will not result in the absorption of any lead into the human body nor have any other adverse impact on health or safety. EXHR will make an initial recommendation within thirty (30) calendar days to the extent practicable. EXHR may request an extension from the Executive Director of the CPSC, if necessary, to make its initial recommendation. A complete request is one that does not require additional information from the requestor for EXHR to make an initial recommendation to the Commission.

(f) Where the Office of Hazard Identification and Reduction's (EXHR) initial recommendation is to deny the request for an exclusion, it will provide in a staff memorandum to the Commission, submitted to the Commission for ballot vote, the basis for denial with sufficient detail for the Commission to make an informed decision that reasonable grounds for an exclusion are not presented. The Commission, by ballot vote, will render a decision on the staff's recommendation. The ballot vote and the staff memorandum will be posted on the CPSC Web site. Any determination by the Commission to grant a request will be published in the **Federal Register** for comment. If the Commission concludes that the request shall be denied, the requestor shall be notified in writing of the denial from the Office of the Secretary along with the official ballot results and the EXHR's staff's memorandum of recommendation.

(g) Where the Office of Hazard Identification and Reduction's (EXHR) initial recommendation is to grant the exclusion, it will submit the basis for that recommendation to the Commission in a memorandum to be voted on by ballot, with sufficient detail for the Commission to make an informed decision that reasonable grounds for a determination are presented. If the notice of proposed rulemaking (NPR) is published, it will invite public comment in the **Federal Register**. EXHR will review and evaluate the comments and supporting documentation before making its final recommendation to the Commission, by staff memorandum submitted to the Commission, for final agency action. If the Commission, after review of the staff's final recommendation, determines that an exclusion is supported by the evidence, it will decide by ballot vote, on whether to publish a final rule in the **Federal Register**.

(h) The filing of a request for exclusion does not have the effect of staying the effect of any provision or limit under the statutes and regulations enforced by the Commission. Even though a request for an exclusion has

been filed, unless an exclusion is issued in final form by the Commission after notice and comment, materials or products subject to the lead limits under section 101 of the CPSIA are considered to be banned hazardous substances if they do not meet the lead limits as provided under paragraph (a) of this section.

Dated: March 5, 2009.

**Todd A. Stevenson,**

*Secretary, Consumer Product Safety Commission.*

[FR Doc. E9–5075 Filed 3–10–09; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF HOMELAND SECURITY

## Bureau of Customs and Border Protection

## DEPARTMENT OF THE TREASURY

## 19 CFR Part 12

**[CBP Dec. 09–05]**

**RIN 1505–AC11**

## Extension of Import Restrictions Imposed on Archaeological Material From Honduras

**AGENCIES:** U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends Customs and Border Protection (CBP) regulations to reflect the extension of import restrictions on certain categories of archaeological material from the Pre-Columbian cultures of the Republic of Honduras (Honduras) that were imposed by CBP Decision (Dec.) 04–08 and expire on March 12, 2009. The Assistant Secretary for Educational and Cultural Affairs, United States Department of State, has determined that conditions continue to warrant the imposition of import restrictions. Accordingly, these import restrictions will remain in effect for an additional 5 years, and the CBP regulations are being amended to reflect this extension until March 12, 2013. These restrictions are being extended pursuant to determinations of the United States Department of State made under the terms of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. CBP Dec. 04–08 contains the Designated List of archaeological material that describes the articles to which the restrictions apply.

**DATES:** *Effective Date:* March 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** For legal aspects, George Frederick McCray, Esq., Chief, Intellectual Property Rights and Restricted Merchandise Branch, Regulations and Rulings, Office of International Trade, (202) 325–0082. For operational aspects, Michael Craig, Chief, Interagency Requirements Branch, Trade Policy and Programs, Office of International Trade, (202) 863–6558.

**SUPPLEMENTARY INFORMATION:**

### Background

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*), the United States entered into a bilateral agreement with the Republic of Honduras (Honduras) on March 12, 2004, concerning the imposition of import restrictions on certain categories of archaeological material from Honduras. The archaeological materials subject to the bilateral agreement represent the Pre-Columbian cultures of Honduras and range in date from approximately 1200 B.C. to 1500 A.D. On March 16, 2004, CBP published CBP Decision (Dec.) 04–08 in the **Federal Register** (69 FR 12267), which amended 19 CFR 12.104g(a) to reflect the imposition of these restrictions and included a list designating the types of archaeological material covered by the restrictions.

Import restrictions listed in 19 CFR 12.104g(a) are ''effective for no more than five years beginning on the date on which the agreement enters into force with respect to the United States. This period can be extended for additional periods not to exceed five years if it is determined that the factors which justified the initial agreement still pertain and no cause for suspension of the agreement exists'' (19 CFR 12.104g(a)).

After reviewing the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, concluding that the cultural heritage of Honduras continues to be in jeopardy from pillage of certain archaeological materials, made the necessary determinations to extend the import restrictions for an additional five years on December 4, 2008. Accordingly, CBP is amending 19 CFR 12.104g(a) to reflect the extension of the import restrictions. The Designated List of Pre-Columbian Archaeological Material from Honduras covered by these import restrictions is set forth in CBP Dec. 04–08. The Designated List and accompanying image database may also be accessed from the following Internet Web site address: *http://exchanges.state.gov/heritage/culprop.html*. The restrictions on the importation of these archaeological materials from Honduras are to continue in effect for an additional five years. Importation of such material continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met.

### Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). For the same reason, a delayed effective date is not required under 5 U.S.C. 553(d)(3).

### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

### Executive Order 12866

Because this rule involves a foreign affairs function of the United States, it is not subject to Executive Order 12866.

### Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

### List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

### Amendment to CBP Regulations

■ For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

## PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

■ 2. In § 12.104g, paragraph (a), the table is amended in the entry for Honduras by removing the reference to ''CBP Dec. 04–08'' in the column headed ''Dec. No.'' and adding in its place the language ''CBP Dec. 04–08 extended by CBP Dec. 09–05''.

**W. Ralph Basham,**

*Commissioner, U.S. Customs and Border Protection.*

Approved: March 5, 2009.

**Timothy E. Skud,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. E9–5001 Filed 3–10–09; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 73 and 101

**[Docket No. FDA–1998–P–0032] (formerly Docket No. 1998P–0724)**

## Listing of Color Additives Exempt From Certification; Food, Drug, and Cosmetic Labeling: Cochineal Extract and Carmine Declaration; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of January 5, 2011, for the final rule that appeared in the **Federal Register** of January 5, 2009. The final rule amends the regulations for cochineal extract and carmine by requiring their declaration by name on the label of all food and cosmetic products that contain these color additives. This final rule responds to reports of severe allergic reactions, including anaphylaxis, to cochineal extract-containing food and carmine-containing food and cosmetics and will allow consumers who are allergic to these color additives to identify and thus avoid products that contain these color additives. This action also responds to a citizen petition submitted by the Center for Science in the Public Interest.

**DATES:** The effective date of the final rule published on January 5, 2009 (74 FR 207), amending 21 CFR 73.100, 73.2087, and 101.22, is confirmed: January 5, 2011.

**FOR FURTHER INFORMATION CONTACT:** James C. Wallwork, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1303.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of January 5, 2009 (74 FR 207), FDA amended the color additive regulation in 21 CFR 73.100 that permits the use of cochineal extract and carmine in foods by adding new paragraph (d)(2) to require that all foods (including butter, cheese, and ice cream) that contain cochineal extract or carmine specifically declare the presence of the color additive by its respective common or usual name, ''cochineal extract'' or ''carmine,'' in the ingredient statement of the food label. Because § 101.22(k) (21 CFR 101.22(k)) allows any certification-exempt color additive to be declared with a general phrase, such as ''Artificial Color'' or ''Artificial Color Added,'' rather than by its specific common or usual name, FDA amended § 101.22(k) to disallow generic declaration of color additives for which individual declaration is required by applicable regulations in part 73 (21 CFR part 73).

For cosmetic products, FDA amended the color additive regulation in § 73.2087 (21 CFR 73.2087) permitting the use of carmine in cosmetics by revising paragraph (c) to require that cosmetics containing carmine that are not subject to the requirements of § 701.3 (21 CFR 701.3) specifically declare the presence of carmine prominently and conspicuously at least once in the labeling. This amendment covers all cosmetic products, including those cosmetics that are manufactured and sold for use only by professionals (e.g., makeup used in photography studios and by makeup artists for television, movie, and theater actors/actresses, products intended for use only by professionals in beauty salons, and camouflage makeup dispensed by physicians and aestheticians to clients with skin conditions such as scarring) and those cosmetics that are gifts or free samples. FDA also included in § 73.2087, as an example, the following statement: ''Contains carmine as a color additive.''

FDA gave interested persons until February 4, 2009, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA finds that the effective date of the final rule that published in the **Federal Register** of January 5, 2009, should be confirmed.

**List of Subjects**

*21 CFR Part 73*

Color additives, Cosmetics, Drugs, Medical devices.

*21 CFR Part 101*

Food labeling, Nutrition, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act (15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e; 42 U.S.C. 243, 264, 271) and under the authority delegated to the Commissioner of Food and Drugs (1410.10 of the FDA Staff Manual Guide) notice is given that no objections or requests for a hearing were filed in response to the January 5, 2009, final rule. Accordingly, the amendments issued thereby become effective January 5, 2011.

Dated: March 6, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–5286 Filed 3–10–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 520

**[Docket No. FDA–2009–N–0665]**

## Oral Dosage Form New Animal Drugs; Amprolium

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule; technical amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by IVX Animal Health, Inc. The ANADA provides for the use of generic amprolium concentrate solution to make medicated drinking water for chickens and turkeys for the treatment of coccidiosis.

**DATES:** This rule is effective March 11, 2009.

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

**SUPPLEMENTARY INFORMATION:** IVX Animal Health, Inc., 3915 South 48th

Street Ter., St. Joseph, MO 64503, filed ANADA 200–463 that provides for the use of Amprolium 9.6% Oral Solution to make medicated drinking water for chickens and turkeys for the treatment of coccidiosis. IVX Animal Health, Inc.'s Amprolium 9.6% Oral Solution is approved as a generic copy of Huvepharma, AD's AMPROVINE 9.6% Solution, approved under NADA 13–149. The ANADA is approved as of February 12, 2009, and the regulations are amended in 21 CFR 520.100 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 520**

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

## PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

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

■ 2. In § 520.100, revise paragraph (b)(3) to read as follows:

**§ 520.100 Amprolium.**

* * * * *

(b) * * *

(3) No. 059130 for use of product described in paragraph (a)(1) of this section as in paragraph (d) of this section.

* * * * *

Dated: February 27, 2009.

**Bernadette Dunham,**

*Director, Center for Veterinary Medicine.*

[FR Doc. E9–5131 Filed 3–10–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 529

**[Docket No. FDA–2009–N–0665]**

### Other Dosage Form New Animal Drugs; Sevoflurane

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Abbott Laboratories, Inc. The supplemental NADA provides for a revised induction dose of sevoflurane inhalant anesthetic in dogs.

**DATES:** This rule is effective March 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8337, e-mail: *melanie.berson@fda.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** Abbott Laboratories, North Chicago, IL 60064, has filed a supplement to NADA 141–103 for SEVOFLO (sevoflurane) used for induction and maintenance of general anesthesia in dogs. The supplemental NADA provides for a revised induction dose of sevoflurane. The supplemental NADA is approved as of July 27, 2006, and the regulations are amended in 21 CFR 529.2150 to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 529**

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

## PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 529 continues to read as follows:

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

**§ 529.2150 [Amended]**

■ 2. In § 529.2150, in the first sentence in paragraph (c)(1), remove ''5 to 7 percent sevoflurane'' and in its place add ''Up to 7 percent sevoflurane''.

Dated: March 3, 2009.

**Steven D. Vaughn,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. E9–4879 Filed 3–10–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 110

**[Docket No. USCG–2008–0155]**

**RIN 1625–AA01**

### Anchorage Regulations; Port of New York

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the size of Romer Shoal Anchorage Ground in Lower New York Bay. This action is necessary to facilitate safe navigation in the area and to provide safe and secure anchorages for vessels transiting this area. This change to the anchorage is intended to increase the safety of life and property within this area of the Port of New York by providing for greater safety of anchored vessels and to enhance the safe and efficient flow of commercial vessels and commerce.

**DATES:** This rule is effective April 10, 2009.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2008–0155 and are available online by going to *http://www.regulations.gov,* selecting the

Advanced Docket Search option on the right side of the screen, inserting USCG–2008–0155 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Waterways Management Division, Coast Guard Sector New York, 212 Coast Guard Drive, room 210, Staten Island, NY 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call LT Edward Munoz, Chief, Waterways Management Division, 718–354–2353. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On July 16, 2008, we published a notice of proposed rulemaking (NPRM) entitled Anchorage Regulations; Port of New York in the **Federal Register** (73 FR 40800). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

**Background and Purpose**

The Sandy Hook Pilots Association through the New York/New Jersey Harbor Safety Committee requested the Coast Guard reduce the size of federal anchorage ground 27(ii) near Romer Shoal located between Ambrose and Swash Channels. The eastern boundary of anchorage ground 27(ii) is being moved about 2,860 yards to the west (inshore). The revised anchorage ground will be bound by the following points: 40 28′27.21″N, 073 56′45.84″W; thence to 40 29′47.70″N, 073 56′46.23″W; thence to 40 31′25.38″N, 074 00′53.50″W; thence to 40 32′11.38″N, 074 01′39.50″W; thence to 40 32′12.38″N, 074 02′05.50″W; thence to 40 31′27.38″N, 074 02′05.50″W; thence to 40 30′13.38″N, 074 00′05.50″W; thence to the point of origin (NAD 83). These positions are slightly different than those published in the Notice of Proposed Rulemaking. It was determined after publication of the proposed rule that the Anchorage Ground coordinates were never converted from datum NAD 27 to datum NAD 83. The coordinates in this final rule have been converted to datum NAD 83 to ensure the unchanged portions of the Anchorage Ground boundary remain the same in the regulation and on the navigation charts that are also in datum NAD 83.

**Discussion of Comments and Changes**

The Coast Guard received no comments on the proposed rulemaking. The following changes were made to the Final Rule.

It was determined after publication of the proposed rule that the Anchorage Ground coordinates were never converted from datum NAD 27 to datum NAD 83. The coordinates in the final rule have been converted to datum NAD 83 to ensure the unchanged portions of the Anchorage Ground boundary remain in the same geographic location and correspond with the coordinates provided in the regulation and on the navigation charts. The revised anchorage ground is bound by the following points: 40 28′27.21″N, 073 56′45.84″W; thence to 40 29′47.70″N, 073 56′46.23″W; thence to 40 31′25.38″N, 074 00′53.50″W; thence to 40 32′11.38″N, 074 01′39.50″W; thence to 40 32′12.38″N, 074 02′05.50″W; thence to 40 31′27.38″N, 074 02′05.50″W; thence to 40 30′13.38″N, 074 00′05.50″W; thence to the point of origin (NAD 83).

**Regulatory Analyses**

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

**Regulatory Planning and Review**

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The finding is based on the fact that the anchorage change conforms to the current needs of commercial vessels and is designed to better accommodate the increased commercial traffic within the Port of New York and New Jersey while balancing use of the waterway between commercial and recreational vessels.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit through the charted Pilot Area to anchor in the eastern end of anchorage ground 27(ii). This revised anchorage ground would not have a significant economic impact on a substantial number of small entities for the following reason: These vessels are still able to anchor in the northeastern quadrant of the Precautionary Area as they have been for several years now while awaiting orders, dock space, or inshore anchorage for conducting lightering, bunkering, crew transfer or other necessary vessel operations.

**Assistance for Small Entities**

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

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

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

**Indian Tribal Governments**

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

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(f), of the Instruction, from further environmental documentation. The rule fits this category as it reduces the size of an anchorage ground.

Under figure 2–1, paragraph (34)(f) of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

**List of Subjects in 33 CFR Part 110**

Anchorage grounds.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 110 as follows:

## PART 110—ANCHORAGE REGULATIONS

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

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Amend § 110.155, by revising paragraph (f)(2)(ii) to read as follows:

**§ 110.155 Port of New York.**

* * * * *

(f) * * *

(2) * * *

(ii) Romer Shoal. All waters bound by the following points: 40°28′27.21″N, 073°56′45.84″W; thence to 40°29′47.70″N, 073°56′46.23″W; thence to 40°31′25.38″N, 074°00′53.50″W; thence to 40°32′11.38″N, 074°01′39.50″W; thence to 40°32′12.38″N, 074°02′05.50″W; thence to 40°31′27.38″N, 074°02′05.50″W; thence to 40°30′13.38″N, 074°00′05.50″W; thence to the point of origin (NAD 83).

* * * * *

Dated: February 23, 2009.

**Dale G. Gabel,**

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

[FR Doc. E9–5095 Filed 3–10–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2009–0100]**

## Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Belle Chasse, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 23 bridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Plaquemines Parish, Louisiana. This temporary rule is issued to facilitate movement of vehicular traffic for the 2009 N'Awlins Air Show, to be held at the U.S. Naval

Air Station, Joint Reserve Base at Belle Chasse, Louisiana.

**DATES:** This deviation is effective from 3:30 p.m. on Friday, May 1, 2009 until 7:45 p.m. on Sunday, May 3, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0100 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** David Frank, Bridge Administration Branch, telephone (504) 671–2128.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy requested a temporary rule changing the operation of the State Route 23 vertical lift span drawbridge. The change accommodates the additional volume of vehicular traffic that the N'Awlins Air Show generates each year. A large amount of the general public is expected to attend the New Orleans Open House Air Show on each day. The change allows for the expeditious dispersal of the heavy volume of vehicular traffic expected to depart the Naval Air Station, Joint Reserve Base following the event. This event has been held annually on or about the last weekend in October but has not been held since Hurricane Katrina. This year, the event is being held on the weekend of May 1–3, 2009. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 3:30 p.m. until 6:45 p.m. on Friday, May 1 and Saturday, May 2, 2009 and from 3:30 p.m. until 7:45 p.m. on Sunday, May 3, 2009.

The State Route 23 vertical lift span drawbridge across the Gulf Intracoastal Waterway (Algiers Alternate Route), mile 3.8, at Belle Chasse, Louisiana has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position and 100 feet above mean high water in the open-to-navigation position. Navigation on the waterway consists primarily of tugs with tows, commercial fishing vessels, and occasional recreational craft. Mariners may use the Gulf Intracoastal Waterway (Harvey Canal) to avoid unnecessary delays.

The Coast Guard has coordinated the closure with waterway users, industry, and other Coast Guard units. It has been determined that this closure will not have a significant effect on vessel traffic.

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

Dated: February 20, 2009.

**David M. Frank,**

*Bridge Administrator.*

[FR Doc. E9–5082 Filed 3–10–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

**[Docket No. USCG–2009–0102]**

### Drawbridge Operation Regulation; Boudreaux Canal, Mile 0.1, Near Chauvin, Terrebonne Parish, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 56 Swing Bridge across Boudreaux Canal, mile 0.1, near Chauvin, Terrebonne Parish, Louisiana. The deviation is necessary to replace all the mechanical machinery used to operate the movable span of the bridge. This deviation allows the bridge to remain in the closed-to-navigation position except for the previously approved scheduled opening times to allow for the passage of vessels.

**DATES:** This deviation is effective from 7 a.m. on March 9, 2009 through 5 p.m. on May 31, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0102 and are available online at *http://www.regulations.gov.* They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, Room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** David Frank, Bridge Administration Branch, telephone (504) 671–2128.

**SUPPLEMENTARY INFORMATION:** Louisiana Department of Transportation and Development has requested a temporary deviation from the operating schedule of the State Route 56 Swing Bridge across Boudreaux Canal, mile 0.1, near Chauvin, Terrebonne Parish, Louisiana. The closure is necessary to allow for repairs to the bridge. The contractor plans to work 24 hours a day, seven days a week until the work is completed. To facilitate the movement of vessels during the maintenance work, the bridge will open for the passage of vessels daily from 6 a.m. until 7 a.m.; from noon until 1 p.m.; and from 6 p.m. until 7 p.m. Additionally, the bridge will open for the passage of vessels at 10 p.m. and 2 a.m. daily for any vessels standing by at the bridge.

The vertical clearance of the swing bridge in the closed-to-navigation position is 5.2 feet and unlimited in the open-to-navigation position. If for any reason, the contractor is not working during this period, the bridge will be returned to normal operation and must open on signal. If the maintenance work is completed prior to May 31, 2009, the bridge will be returned to normal operation. The bridge owner will keep the Coast Guard informed as to any change in the schedule so that proper notices to mariners may be issued informing the public of changes to the operation of the bridge.

Presently, the bridge opens on signal in accordance with 33 CFR 117.5. This deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. on Monday, March 9, 2009 through 5 p.m. on Saturday, May 9, 2009; however, the bridge must open on signal for the passage of vessels from 6 a.m. until 7 a.m.; from noon until 1 p.m. and from 6 p.m. until 7 p.m. daily. Additionally, the bridge must open on signal for any vessels standing by at 10 p.m. and 2 a.m. daily. During the closure periods all the mechanical machinery used for operating the movable span will be changed. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft. Due to prior experience and coordination with waterway users it has been determined

that this closure will not have a significant effect on these vessels.

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

Dated: February 20, 2009.

**David M. Frank,**

*Bridge Administrator.*

[FR Doc. E9–5090 Filed 3–10–09; 8:45 am]

**BILLING CODE 4910–15–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R04–OAR–2005–AL–0002; FRL–8776–9]**

### Approval and Promulgation of Air Quality Implementation Plans; Alabama Visible Emissions Rule; Informational Notice

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of document availability.

**SUMMARY:** The purpose of this notice is to inform the public of the availability of documents that were not made available electronically to the public through *http://www.regulations.gov* when EPA's final rulemaking was published in the **Federal Register** . These documents were a part of the docket for EPA's final rulemaking approving Alabama's state implementation plan (SIP) revision for the Alabama Visible Emissions Rule. The complete docket was available in hard copy at Region 4. EPA's final rulemaking for this SIP revision was published on October 15, 2008.

**ADDRESSES:** The hard copy docket is available at the U.S. Environmental Protection Agency, Air, Pesticides and Toxics Management Division, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303. The electronic docket is available at *http://www.regulations.gov.* Refer to EPA docket # ''EPA–R04–OAR–2005–AL–0002''.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joel Huey, U.S. Environmental Protection Agency, Air, Pesticides and Toxics Management Division, Air Planning Branch; 61 Forsyth Street, SW.; Atlanta, Georgia 30303. Mr. Huey can be reached via e-mail at *Huey.joel@epa.gov* or phone at (404) 562–9104.

**SUPPLEMENTARY INFORMATION:** EPA uses *http://www.regulations.gov* to provide the public with access to pertinent documents related to EPA actions for SIP revisions. In general, each action has a hard copy paper docket and an electronic docket which includes information such as: the state's submission and supporting documentation; EPA's rulemaking and correspondences related to the SIP revision; public comments provided for the SIP revision during the open public comment period; and other pertinent documentation related to the rulemaking action. The process for generating the electronic docket includes uploading pertinent documents into the Federal Docket Management System (FDMS), and then taking action to make these documents available electronically to the public on *http://www.regulations.gov* upon publication of EPA's rulemaking action in the **Federal Register**. The general public cannot view documents until they are promoted following publication of the associated **Federal Register** document.

On April 12, 2007, EPA published a proposed rule approving Alabama's Visible Emissions Rule. At that time, EPA opened a 60 day public comment period, and subsequently extended the comment period an additional 30 days. The comment period for the proposed rule ended on July 11, 2007. All pertinent documents related to EPA's proposal, comments received during the public comment period and the rulemaking actions were included in FDMS and promoted to *http://www.regulations.gov* for public access. Subsequent to the proposal phase, EPA received and generated other pertinent documents related to EPA's final rulemaking action which was published in the **Federal Register** on October 15, 2008. The other pertinent documents are as follows:

- EPA–R04–OAR–2005–AL–0002–0022: Alabama Visible Emissions Final Rule;
- EPA–R04–OAR–2005–AL–0002–0023: Alabama Governor's letter to the Administrator;
- EPA–R04–OAR–2005–AL–0002–0024: September 11, 2003, ADEM cover letter;
- EPA–R04–OAR–2005–AL–0002–0025: Governor's letter to the Administrator;
- EPA–R04–OAR–2005–AL–0002–0026: EPA response to November 6, 2007, Governor's letter;
- EPA–R04–OAR–2005–AL–0002–0027: EPA response to June 17, 2008, Governor's letter;
- EPA–R04–OAR–2005–AL–0002–0028: Meeting Notes;
- EPA–R04–OAR–2005–AL–0002–0029: ADEM Letter to EPA R4;
- EPA–R04–OAR–2005–AL–0002–0030: ADEM Letter to Governor;
- EPA–R04–OAR–2005–AL–0002–0031: EPA 2008 prehearing comment letter;
- EPA–R04–OAR–2005–AL–0002–0032: EPA response to Alabama congressional representatives;
- EPA–R04–OAR–2005–AL–0002–0033: Letter from Alabama congressional representatives;
- EPA–R04–OAR–2005–AL–0002–0034: References;
- EPA–R04–OAR–2005–AL–0002–0035: State Implementation Plan Consistency Process Record;
- EPA–R04–OAR–2005–AL–0002–0036: Administrator Memorandum;
- EPA–R04–OAR–2005–AL–0002–0037: Alabama Opacity Region 4 Meeting Notes;
- EPA–R04–OAR–2005–AL–0002–0038: Recording Dust Emission Measurements in the Cement Industry with the FM4 Smoke Density Meter Made by Messrs. Sick and Staub;
- EPA–R04–OAR–2005–AL–0002–0039: ''Emissions from Electrostatic Precipitators,'' In Electrostatic Preciptator Manual, 332–350;
- EPA–R04–OAR–2005–AL–0002–0040: Communications with ADEM; and
- EPA–R04–OAR–2005–AL–0002–0041: Region 4 Meeting Notes Continued.

In December 2008, EPA received notification of litigation related to EPA's final rule approving the revisions to Alabama's Visible Emissions Rule. As EPA prepared the documents needed for the administrative record, EPA compared documents listed in FDMS versus *http://www.regulations.gov* and noted some discrepancies. After some investigation, it was determined that, while EPA prepared the documents for inclusion in the public electronic docket by uploading the pertinent documents into FDMS, the necessary action to make these documents available to the public through the *http://www.regulations.gov* Web site was not taken upon publication of EPA's final rule on October 15, 2008.

The documents that were inadvertently not made available electronically in the docket included all documents provided subsequent to the proposal phase for EPA's action (see list above). The electronic docket did include documents related to EPA's proposed rulemaking, which were promoted and made available to the public earlier.

EPA's error related to the promotion of pertinent documents to the final rulemaking action became apparent to

EPA on January 8, 2009, and was corrected on January 9, 2009. The electronic docket for this rulemaking action can be accessed at regulations.gov with reference to docket number ''EPA–R04–OAR–2005–AL–0002.'' Since identification of this error, the Region 4 office has refined its protocol to clearly identify necessary steps that must be taken to ensure the completeness and availability of the electronic docket to the public. EPA did generate and maintains a hard copy paper docket for this action in addition to the electronic docket. This hard copy paper docket contained all the pertinent documents for EPA's final rulemaking and continues to be available for inspection by the public at the EPA Region 4 office. In EPA's final rulemaking published on October 15, 2008, EPA informed the public that the docket materials were available both electronically and in hard copy. Additionally, EPA provided contact information in that rulemaking for the public to request access to material. EPA did not receive any requests for this material through the October 15, 2008, rulemaking action.

Dated: February 9, 2009.

**Beverly H. Banister,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E9–5220 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2007–1170; FRL–8402–1]**

### Benfluralin, Carbaryl, Diazinon, Dicrotophos, Fluometruon, Formetanate Hydrochloride, Glyphosate, Metolachlor, Napropamide, Norflurazon, Pyrazon, and Tau-Fluvalinate; Technical Amendment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** EPA issued a final rule in the **Federal Register** of September 10, 2008, revoking, revising, and establishing certain tolerances. This document is being issued to correct the amendatory language for § 180.169.

**DATES:** This final rule is effective March 11, 2009.

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–1170. All documents in the docket are listed in the docket index available in*http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at*http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Jane Smith, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; e-mail address:*smith.jane-scott@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Action Apply to Me?*

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document and Other Related Information?*

In addition to accessing electronically available documents at*http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr*.

#### II. What Does this Amendment Do?

EPA issued a final rule in the **Federal Register** of September 10, 2008 (73 FR 52607) (FRL–8379–3), revoking, revising, and establishing certain tolerances for residues of benfluralin, carbaryl, diazinon, dicrotophos, fluometruon, formetanate hydrochloride, glyphosate, metolachlor, napropamide, norflurazon, pyrazon, and tau-fluvalinate.On page 52611, third column, the amendatory language for § 180.169 inadvertently omitted the phrasing to delete paragraphs (a)(3) and (a)(4). This document corrects that error.

#### III. Why is this Amendment Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the Agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical amendment final without prior proposal and opportunity for comment, because the use of notice and comment procedures is unnecessary to effectuate this amendment. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

#### IV. Do Any of the Statutory and Executive Order Reviews Apply to this Action?

EPA included the required statutory discussion in the September 10, 2008 final rule (72 FR 52607).

#### V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

#### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 17, 2009.

**Debra Edwards,**

*Director, Office of Pesticide Programs.*

■ Therefore, 40 CFR part Chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

**§ 180.169 [Amended]**

■ 2. Section 180.169 is amended by removing paragraphs (a)(3) and (a)(4).

[FR Doc. E9–5223 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2007–0301; FRL–8402–6]**

## Chlorimuron-ethyl; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of chlorimuron-ethyl in or on berry, low growing, except strawberry, subgroup 13-07H. Interregional Research Project Number 4 (IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective March 11, 2009. Objections and requests for hearings must be received on or before May 11, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0301. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Susan Stanton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5218; e-mail address: *stanton.susan@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document?*

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2007–0301 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before May 11, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2007–0301, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

### II. Petition for Tolerance

In the **Federal Register** of June 27, 2007 (72 FR 35237) (FRL–8133–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E7153) by Interregional Research Project Number 4 (IR–4), 500 College Road East, Suite 201 W., Princeton, NJ 08540–6635. The petition requested that 40 CFR 180.429 be amended by establishing tolerances for residues of the herbicide chlorimuron-ethyl, ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2yl) amino]carbonyl]sulfonyl]benzoate], in or on cranberry; bearberry; bilberry; lowbush berry; cloudberry; lingonberry; muntries; and partridgeberry, each at 0.02 parts per million (ppm). That notice referenced a summary of the petition prepared by E.I. du Pont de Nemours and Company, the registrant, on behalf of IR-4, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

EPA has determined that a tolerance of 0.02 ppm on berry, low growing, except strawberry, subgroup 13–07H is

appropriate in lieu of the proposed individual tolerances on berry commodities. The reason for this change is explained in Unit IV.C.

## III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of chlorimuron-ethyl on berry, low growing, except strawberry, subgroup 13–07H at 0.02 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Chlorimuron-ethyl has low or minimal acute toxicity via the oral, dermal and inhalation routes of exposure. It is mildly irritating to the eye and non-irritating to the skin; it is not a skin sensitizer.

In subchronic toxicity studies with chlorimuron-ethyl, no adverse effects were observed up to the limit dose tested in mice; decreased body weight gain and liver pathology (margination of hepatocyte cytoplasmic content in the centrilobular areas) were observed in rats (males only); and mild hemolytic anemia, atrophy of the thymus and prostate and increased liver weights were seen in dogs. Chronic exposure of dogs to chlorimuron-ethyl also led to mild anemia (decreased erythrocyte count, hematocrit, and hemoglobin concentration), but atrophy of the thymus and prostate were not seen. In rats, treatment-related effects observed were limited to decreased body weight and body weight gain in both sexes after long-term exposure. Prostatitis (males) and fatty replacement in the pancreas (both sexes) were also observed but considered incidental occurrences; and biliary hyperplasia/fibrosis seen in females was attributed to aging. In mice, there were no treatment-related effects observed up to the highest dose tested (216 milligrams/kilograms/day (mg/kg/day)). There were no treatment-related increases in tumors in rat and mouse carcinogenicity studies after exposure to chlorimuron-ethyl. Chlorimuron-ethyl is classified as ''Not Likely to be Carcinogenic to Humans.''

In the developmental toxicity studies, decreases in maternal body weight gain and delayed ossification in fetuses were observed in rats at the same dose (150 mg/kg/day). In rabbits, decreases in maternal body weight gain were seen at 300 mg/kg/day, while delayed ossification was seen in fetuses at a lower dose of 48 mg/kg/day, indicating increased quantitative susceptibility. In a guideline 2–generation reproduction study in rats, decreased body weight and histopathology in the cerebellum (cellular changes in the internal granular and external germinal layers) were seen in pups at 177 mg/kg/day. These effects were seen in the absence of maternal toxicity, indicating potential increased quantitative susceptibility of the pups to chlorimuron-ethyl. However, these effects were not associated with any neurotoxicity or neurobehavioral changes and not observed in other reproduction studies in rats. In a non-guideline reproduction toxicity study (1–generation) in rats, decreased body weight (females) and liver histopathology (males) were seen in parental animals at 173 mg/kg/day, along with decreases in litter weights. In another reproduction study (1–year interim sacrifice) in rats, decreases in maternal and pup body weights were observed at 195 mg/kg/day.

There is no indication of neurotoxicity in the toxicity database for chlorimuron-ethyl. In a 2–generation reproduction study in rats, histopathological alterations were seen in the cerebellum (cellular changes in the internal granular and external germinal layers) of F2 pups at 177 mg/kg/day; however, these findings were not associated with any neurobehavioral changes or any indications of neurotoxicity. In addition, these histopathological alterations were not observed in two other reproduction studies, and there was no evidence of neurotoxicity observed in other rat toxicity studies or toxicity studies in other species (rabbits, mice, or dogs).

Hematological changes (indicative of mild anemia) and atrophy of the thymus were observed in dogs after subchronic exposure. However, atrophy of the thymus was not associated with any histopathology and not seen after chronic exposure. No other potential immunotoxic effects were observed in the toxicology database.

Specific information on the studies received and the nature of the adverse effects caused by chlorimuron-ethyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document *Chlorimuron-ethyl: Human Health Risk Assessment for Proposed Uses on Cranberry and Low-growing Berry Subgroup 13–07H, except Strawberry, PP# 6E7153*, page 36 in docket ID number EPA–HQ–OPP–2007–0301.

### *B. Toxicological Endpoints*

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the NOAEL in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the LOAEL or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-term, intermediate-term, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the

POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for chlorimuron-ethyl used for human risk assessment can be found at *http://www.regulations.gov* in document *Chlorimuron-ethyl: Human Health Risk Assessment for Proposed Uses on Cranberry and Low-growing Berry Subgroup 13–07H, except Strawberry, PP# 6E7153*, page 16 in docket ID number EPA–HQ–OPP–2007–0301.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to chlorimuron-ethyl, EPA considered exposure under the petitioned-for tolerance as well as all existing chlorimuron-ethyl tolerances in 40 CFR 180.429. EPA assessed dietary exposures from chlorimuron-ethyl in food as follows:

i. *Acute exposure*. Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. No such effects were identified in the toxicological studies for chlorimuron-ethyl; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Continuing Surveys of Food Intakes by Individuals (CSFII). As to residue levels in food, EPA assumed tolerance-level residues and 100 percent crop treated (PCT) for all existing and new uses of chlorimuron-ethyl.

iii. *Cancer*. Based on the results of carcinogenicity studies in rats and mice, EPA classified chlorimuron-ethyl as ''Not Likely to be Carcinogenic to Humans.'' Therefore, an exposure assessment for evaluating cancer risk is not needed for this chemical.

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

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of chlorimuron-ethyl for chronic exposures for non-cancer assessments are estimated to be 2.4 parts per billion (ppb) for surface water and 1.76 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the only dietary exposure scenario for which a toxicological endpoint of concern was identified, the water concentration value of 2.4 ppb was used to assess the contribution to chlorimuron-ethyl dietary exposure from drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Chlorimuron-ethyl is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found chlorimuron-ethyl to share a common mechanism of toxicity with any other substances, and chlorimuron-ethyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that chlorimuron-ethyl does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *http://www.epa.gov/pesticides/cumulative*.

*D. Safety Factor for Infants and Children*

1. *In general*. Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicity database for chlorimuron-ethyl includes guideline rat and rabbit developmental toxicity studies and a 2–generation reproduction toxicity study in rats, as well as two additional non-guideline reproduction studies in rats (a 1–generation study and 1–year interim sacrifice study). No evidence of increased prenatal or postnatal susceptibility was seen in the developmental toxicity study in rats or in the non-guideline reproduction toxicity studies in rats. In the rabbit developmental study, delayed ossification was observed in fetuses at 48 mg/kg/day, while maternal effects (decreased body weight gain) were seen at 300 mg/kg/day, suggesting increased quantitative susceptibility of fetuses. In the 2–generation rat reproduction study, decreased body weight and histopathology findings in the cerebellum were observed in pups at 177/214 mg/kg/day (male/female) in the absence of maternal toxicity, also suggesting increased quantitative susceptibility of the pups.

Although the data suggest increased quantitative susceptibility in the developmental rabbit study and the 2–generation rat reproduction study, there are no residual uncertainties with regard to prenatal toxicity following *in utero* exposure of rats or rabbits or prenatal and/or postnatal exposures of rats. The fetal effect seen in rabbits was limited to delayed ossification, and, although effects (histopathology in the cerebellum) were seen in a rat reproduction study, there was no evidence of increased susceptibility observed in two additional reproduction studies in rats. Additionally, there are clear NOAELs for the offspring effects

seen in rabbits (NOAEL=13 mg/kg/day) and rats (17 mg/kg/day). Finally, the NOAEL (9 mg/kg/day) used to establish the cRfD of 0.09 mg/kg/day is considered protective of potential developmental effects observed at the higher doses. Considering the overall toxicity database and doses selected for risk assessment, the degree of concern for the effects observed in the studies is low.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for chlorimuron-ethyl is adequate to characterize potential prenatal and postnatal risk for infants and children. Acceptable/guideline studies for developmental toxicity in rats and rabbits and reproduction toxicity in rats are available for FQPA assessment.

On December 26, 2007 EPA began requiring functional immunotoxicity testing and acute and subchronic neurotoxicity testing of all food and non-food use pesticides. Since these requirements went into effect after the tolerance petition was submitted, these studies are not yet available for chlorimuron-ethyl. In the absence of specific immunotoxicity and neurotoxicity studies, EPA has evaluated the available chlorimuron-ethyl toxicity data and determined that an additional uncertainty factor is not required to account for potential neurotoxicity or immunotoxicity. The reasons for this determination are explained below:

*a*. Hematological changes (indicative of mild anemia) and atrophy of the thymus were observed in dogs following subchronic exposure to chlorimuron-ethyl at a dose of 45.8/42.7 (M/F) mg/kg/day, indicating potential immunotoxicity. However, atrophy of the thymus was not associated with any histopathology and was not seen after chronic exposure; and no other potential immunotoxic effects were observed in the toxicology database. Therefore, EPA does not believe that conducting immunotoxicity testing will result in a NOAEL less than the NOAEL of 9 mg/kg/day already established for chlorimuron-ethyl, and an additional factor for database uncertainties (UFDB) is not needed to account for potential immunotoxicity.

*b*. There is no indication in the toxicity database that chlorimuron-ethyl is a neurotoxic chemical, and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

ii. Although there is evidence of increased quantitative susceptibility in the developmental rabbit study and the 2–generation rat reproduction study, the degree of concern for the effects observed in the studies is low, and there are no residual uncertainties with regard to prenatal toxicity following *in utero* exposure of rats or rabbits or prenatal and/or postnatal exposures of rats.

iii. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on the assumptions of 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to chlorimuron-ethyl in drinking water. Residential exposure to chlorimuron-ethyl is not expected. These assessments will not underestimate the exposure and risks posed by chlorimuron-ethyl.

### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk*. An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified and no acute dietary endpoint was selected. Therefore, chlorimuron-ethyl is not expected to pose an acute risk.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to chlorimuron-ethyl from food and water will utilize less than 1% of the cPAD for the general population and all population subgroups, including infants and children. There are no residential uses for chlorimuron-ethyl.

3. *Short-term and intermediate-term risk*. Short-term and intermediate-term aggregate exposure take into account short-term and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Chlorimuron-ethyl is not registered for any use patterns that would result in residential exposure. Therefore, the short-term/intermediate-term aggregate risk is the sum of the risk from exposure to chlorimuron-ethyl through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. EPA has classified chlorimuron-ethyl into the category ''Not Likely to be Carcinogenic to Humans''. Chlorimuron-ethyl is not expected to pose a cancer risk.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to chlorimuron-ethyl residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

Adequate enforcement methodology (a high performance liquid chromotography (HPLC) photoconductivity method) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

### *B. International Residue Limits*

There are no established or proposed Canadian, Mexican or Codex MRLs for residues of chlorimuron-ethyl on berry commodities.

### *C. Revisions to Petitioned-For Tolerances*

IR-4 petitioned for individual tolerances on bearberry, bilberry, lowbush berry, cloudberry, cranberry, lingonberry, muntries and partridgeberry. In the **Federal Register** of December 7, 2007 (72 FR 69150) (FRL–8340–6), EPA issued a final rule that revised the crop grouping regulations. As part of this action, EPA expanded and revised berries group 13. Changes to crop group 13 included adding new commodities, revising existing subgroups and creating new subgroups (including a low growing berry, except strawberry, subgroup (13–07H) consisting of the commodities requested in this petition and cultivars, varieties, and/or hybrids of these). EPA indicated in the December 7, 2007 final rule as well as the earlier May 23, 2007 proposed rule (72 FR 28920) that, for

existing petitions for which a Notice of Filing had been published, the Agency would attempt to conform these petitions to the rule. Therefore, consistent with this rule, EPA is establishing a tolerance on low growing berry, except strawberry, subgroup 13–07H. EPA concludes it is reasonable to establish the tolerance on the newly created subgroup, since the individual commodities for which tolerances were requested are identical to those which comprise low growing berry, except strawberry, subgroup 13–07H.

**V. Conclusion**

Therefore, a tolerance is established for residues of chlorimuron-ethyl, ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2yl) amino]carbonyl]sulfonyl]benzoate], in or on berry, low growing, except strawberry, subgroup 13–07H at 0.02 ppm.

**VI. Statutory and Executive Order Reviews**

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

**VII. Congressional Review Act**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 24, 2009.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

**PART 180—[AMENDED]**

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.429 is revised to read as follows:

**§ 180.429 Chlorimuron ethyl; tolerances for residues.**

(a) *General.* Tolerances are established for residues of the herbicide chlorimuron ethyl, ethyl 2-[[[[(4-chloro-6-methoxypyrimidin-2yl) amino]carbonyl]sulfonyl]benzoate], in or on the following raw agricultural commodities:

| Commodity | Parts per million |
|---|---|
| Berry, low growing, except strawberry, subgroup 13–07H | 0.02 |
| Peanut | 0.02 |
| Soybean | 0.05 |

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. E9–5192 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 180

**[EPA–HQ–OPP–2005–0303; FRL–8400–2]**

## Bacillus Mycoides Isolate J; Temporary Exemption From the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a temporary exemption from the requirement of a tolerance for residues of the *Bacillus mycoides* isolate J in or on pecans, potatoes, sugar beets, tomatoes, and peppers when used in accordance with good agricultural practices. Montana Microbial Products, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting to amend the existing temporary tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus mycoides* isolate J in or on pecans, potatoes, sugar beets, tomatoes, and peppers on a time-limited basis. The temporary tolerance exemption expires on March 31, 2011.

**DATES:** This regulation is effective March 11, 2009. Objections and requests for hearings must be received on or before May 11, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0303. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8077; e-mail address: *cerrelli.susanne@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Access Electronic Copies of this Document?*

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guideline at *http://www.epa.gpo/opptsfrs/home/guidelin.htm*.

### *C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0303 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 11, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2005–0303, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of June 18, 2008 (73 FR 34734-34736) (FRL–8366–9), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 8G7320) by Montana Microbial Products, 510 East Kent Ave., Missoula, MT 59801. The petition requested that 40 CFR part 180 be amended by establishing a temporary exemption from the requirement of a tolerance for residues of *Bacillus mycoides* isolate J. This notice included a summary of the petition prepared by the petitioner, Montana Microbial Products. There were no comments received in response to the notice of filing. The Agency has determined that the change sought by Montana Microbial products is actually a revision of § 180.1269, rather than an amendment of the exemption. The exemption for the commodities listed in § 180.1269 expired on December 31, 2007 and new exemptions for pecans, potatoes, tomatoes, and peppers based on the petition are being approved for a period that does not expire until March 31, 2011, based on the petition submitted by Montana Microbial Products. Therefore, the section is being revised to reflect these changes.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B) of FFDCA, in establishing or maintaining in effect an exemption from the requirement of a

tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C) of FFDCA, which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....'' Additionally, section 408(b)(2)(D) of FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

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

## III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

An Acute Pulmonary Toxicity/Pathogenicity study (OPPTS 885.3150) in rats which were dosed intratracheally with *Bacillus mycoides* isolate J at 1.1 x $10^8$ cfu/animal, was reviewed and found to be supplemental because a clear pattern of clearance from all organs was not demonstrated during the study's 35–day length. The test substance, however, did show a pattern of clearance in some organs. Differential heat treatment of tissue samples had suggested that most of the recovered organisms were spores. No treated animals died nor were there signs in the animals of toxicity or pathogenicity. Given the ubiquitous nature of this spore forming bacterium which is found on plants, in soil, water, air and decomposing plant tissue, along with the lack of mortality of the test animals and the absence of overt signs of toxicity or pathogenicity in the animals during the course of this pulmonary study, issuance of the Experimental Use Permit (EUP) can be justified provided there are instructions for appropriate respiratory protection for the applicators specified on the product label.

The Agency has granted the requests for waivers for Acute Oral Toxicity and Pathogenicity (OPPTS 885.3050); Acute Injection Toxicity and Pathogenicity (OPPTS 885.3200); Acute Oral Toxicity (OPPTS 870.1100); Acute Dermal Toxicity (OPPTS 870.1200); Acute Inhalation Toxicity (OPPTS 870.1300) mammalian studies for *Bacillus mycoides* isolate ''J'' for this experimental–use permit (82761–EUP–2), based on the following submitted rationale:

1. Personnel who worked with BmJ, more than 20 people over 8 years, have not reported any exposure effects in routine use of the experimental product.

2. Exposure to BmJ will be limited by supervision and label mandated protective equipment.

3. *B. mycoides* is not reported as a human pathogen, or as a cause of foodborne illness, food spoilage or plant diseases and does not persist on plant surfaces. Due to the ubiquitous level of *B. mycoides* present in agricultural soils, there has been long term human exposure to *B. mycoides* in crops and to residual *B. mycoides* cells or spores in food crops. No toxicity, infectivity or pathogenicity of *B. mycoides* in humans was reported in numerous searched citations.

4. *B. mycoides* is readily differentiable from other *B. cereus* group organisms in production batches (including *Bacillus thuringiensis*, *Bacillus pseudomycoides*, *Bacillus anthracis*, *Bacillus cereus*, and *Bacillus weihenstephanensis*) and well defined quality control procedures keep contaminants from fermentation batches. *B. mycoides* is a member of the closely related group of *Bacillus* species which includes *B. anthracis* and *B. cereus* strains known to cause food poisoning as well as the widely used microbial pesticide *B. thuringiensis*. As part of a well recognized screening procedure used for quality control of *B. thuringiensis* and *B. cereus*, similar procedures shall be required for *B. mycoides*.

The Agency has granted the requests for waivers for the studies Primary Eye Irritation (OPPTS 870.2400) and Primary Dermal Irritation (OPPTS 870.2500). The registrant had provided the following rationales for the requests with which the EPA agrees:

1. Personnel who worked with *Bacillus mycoides* isolate J for 2 to 7 years showed no eye or dermal exposure effects.

2. Eye or dermal exposure to *Bacillus mycoides* isolate J will be limited by supervision and protective equipment. If eye or dermal exposure did, however, occur, the spores will rinse out of the eye with water or wash off the skin with soap and water because spores are hydrophilic.

3. *Bacillus mycoides* isolate J is not recorded as a human pathogen. Due to the ubiquitous presence of *Bacillus mycoides* isolate J in agricultural soils, there has been long term human exposure to *Bacillus mycoides* isolate J in crops and to residual *Bacillus mycoides* isolate J cells or spores in food crops. No toxicity or pathogenicity of *Bacillus mycoides* isolate J in humans has been reported in numerous searched citations.

In connection with the requirement for reporting Hypersensitivity Incidents (OPPTS 885.3400), the Registrant has notified the Agency that no recorded or reported adverse hypersensitivity reaction to *Bacillus mycoides* isolate J has occurred during the period of 2 years in which the substance has been handled in a laboratory setting.

## IV. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

### *A. Dietary Exposure*

The proposed EUP is not expected to result in increased dietary exposures of *Bacillus mycoides* isolate J to the general population.

1. *Food.* The experimental program will include five crops, pecans, potatoes, sugar beets, tomatoes and peppers. The quantity of BmJ applied to plant foliage, 7.5 x $10^{11}$ spores/acre per application in typical applications to a maximum of 3.75 x $10^{12}$ spores per acre in pecan trees, is small compared to the natural background levels of *Bacillus mycoides*. In agricultural soils *B. mycoides* typically occurs at about $10^5$ spores per gram and the titer of *Bacillus mycoides* isolate J applied to the foliage typically declines from $10^6$ spores/$cm^2$ to between 100 and 1,000 spores/$cm^2$ over a 2–week period. In pecans, spores applied as foliage spray will also contact nutshells, however spores would be removed when shells are removed prior to any human consumption. In potatoes, spores applied to foliage will not directly contact tubers. Tubers are exposed to natural soil concentrations of *Bacillus* that exceed the quantity of *Bacillus mycoides* isolate J spores

applied to potato foliage. Washing, peeling, and or cooking will remove or destroy any residual spores. Because the ordinary consumer encounters only the sugar produced from sugar beets, (in which the bacterium is not present), an increased dietary exposure is not foreseen from treated sugar beets. Residue of *Bacillus mycoides* isolate J applied to sugar beet foliage is not expected to carry through sugar beet processing to create a residue in refined sugar for human consumption. Application of *Bacillus mycoides* isolate J will create minimal residues on sugar beet foliage. Cattle fed sugar beet tops treated with *Bacillus mycoides* isolate J may have an exposure to a low level of *Bacillus mycoides* isolate J spores. Given the natural occurrence of *B. mycoides*, the exposure to applied *Bacillus mycoides* isolate J on sugar beet tops is not expected to represent a significant increase in natural exposure of cattle to *B. mycoides*. Nor is human exposure anticipated of *Bacillus mycoides* isolate J in meat or milk as a result of feeding sugar beet tops with *Bacillus mycoides* isolate J residue to cattle.

In tomatoes and peppers, spores applied as foliage sprays may leave a *Bacillus mycoides* isolate J spore residue on the tomatoes or peppers. From persistence studies, discussed in Unit III., residues of *Bacillus mycoides* isolate J are expected to decline by more than 1,000–fold over a 2–week period. Washing harvested fruit will also further reduce or eliminate any *Bacillus mycoides* isolate J residue.

2. *Drinking water exposure*. There is minimal to negligible risk that surface water and, thus, drinking water exposure would occur with the proposed EUP testing. The proposed test sites are at least one half mile from the nearest surface water. When spray drift or accidental application of *Bacillus mycoides* isolate J over surface water did occur, the concentration of *Bacillus mycoides* isolate J spores in the water had been found to be very low. For example an acre dose of *Bacillus mycoides* isolate J, 7.5 x $10^{11}$ spores to 100 square meters of surface water 1 meter deep, would result in a concentration of 750 spores per cc. of water as noted in the EPA ecological risk assessment for *Bacillus mycoides* isolate J which is based on data submitted by Montana Microbial Products.

*B. Other Non-Occupational Exposure*

Natural background levels of *Bacillus mycoides* isolate J are reported to typically occur at about $10^5$ spores per gram in agricultural soils.

EPA concludes that dermal or inhalation exposure to *Bacillus mycoides* isolate J in the general population as a result of this EUP is not likely to occur, based on information submitted in pesticide tolerance petition 8G7320 indicating that the relevant EUP agricultural sites, which will not exceed 956 acres, are not accessible to individuals other than those conducting this EUP program.

**V. Cumulative Effects**

Pursuant to section 408(b)(2)(D)(v) of FFDCA, EPA has considered available information on the cumulative effects of such residues and other substances that have a common mechanism of toxicity. These considerations included the cumulative effects on infants and children of such residues and other substances with a common method of toxicity. Because there is no indication of mammalian toxicity or pathogenicity resulting from *Bacillus mycoides* isolate J, we conclude that there are no cumulative effects for this bacterium.

**VI. Determination of Safety for U.S. Population, Infants and Children**

The Agency has determined that there is reasonable certainty that no harm will result to the U. S. population from exposure to residues of *Bacillus mycoides* isolate J in connection with the testing for the proposed EUP program. This determination includes all anticipated dietary exposures and other non-occupational exposures for which there is reliable information. Oral ingestion of the *Bacillus mycoides* isolate J organism on crops treated under the proposed EUP is unlikely because: The portion of the pecans, potatoes, and sugar cane that is treated is not consumed by humans. The residues on peppers and tomatoes are readily removed by washing with water, and the U.S. population is already exposed to *B. mycoides* as a prevalent naturally occurring microbe in untreated soil. Data submitted in a pulmonary toxicity/pathogenicity study revealed no signs of overt toxicity or pathogenicity in the test animals. The results of an extensive literature search, which included numerous citations of the test organism, yielded no reports of its pathogenicity for mammals. There will be no access to persons other than participants in the program to the test sites for the EUP. The participants in the EUP program are required to wear appropriate respiratory protection. Section 408(b)(2)(C) of FFDCA provides that EPA shall assess the available information about consumption patterns among infants and children, special susceptibility of infants and children to pesticide chemical residues, and the cumulative effects on infants and children of the residues and other substances with a common mechanism of toxicity. In addition, section 408(b)(2)(C) of FFDCA also provides that EPA shall apply an additional tenfold margin of safety, also referred to as margins of exposure (MOEs), for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database unless EPA determines that a different MOE will be safe for infants and children. In this instance, based on all available information, the Agency concludes that there is a finding of no toxicity for *Bacillus mycoides* isolates J. Thus, there are no threshhold effects of concern to infants and children when the microbial is used as a fungicide. Accordingly, the Agency concludes that the additional MOE is not necessary to protect infants and children, and that not adding any additional MOE will be safe for infants and children.

**VII. Other Considerations**

*A. Endocrine Disruptors*

The pesticidal active ingredient, *Bacillus mycoides* isolate J is not known to exert an influence on the endocrine system.

*B. Analytical Method(s)*

Analytical methods for *Bacillus mycoides* isolate J that are sufficient to justify the issuance of an Experimental Use Permit (EUP) have been submitted to the Agency. An enforcement analytical method is not required to support an exemption from the requirement of a tolerance.

*C. Codex Maximum Residue Level*

No codex maximum residue levels exist for the microbial *Bacillus mycoides* isolate J.

**VIII. Statutory and Executive Order Reviews**

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from*

*Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

### IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 14, 2009.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is revised as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.1269 is revised to read as follows:

#### § 180.1269 Bacillus mycoides Isolate J: exemption from the requirement of a tolerance.

*Bacillus mycoides* isolate J is temporarily exempt from the requirement of a tolerance when used as a fungicide on pecans, potatoes, sugar beets, tomatoes, and peppers in accordance with the Experimental Use Permit 82761–EUP–2. This temporary exemption from the requirement of a tolerance expires and is revoked on March 31, 2011.

[FR Doc. E9–5266 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2008–0617; FRL–8397–2]**

### 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt; (CAS Reg. No. 518026–64–7); when used as an inert ingredient in a pesticide chemical formulation. BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt on food or feed commodities.

**DATES:** This regulation is effective March 11, 2009. Objections and requests for hearings must be received on or before May 11, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0617. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8353; e-mail address: *debesai.alganesh@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Access Electronic Copies of this Document?*

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

*C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0617. in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 11, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0617, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of November 5, 2008 (73 FR 65852) (FRL–8385–1), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 8E7381) filed by BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-propenoic acid, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly(oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt (CAS Reg. No. 518026–64–7). That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...'' and specifies factors EPA is to consider in establishing an exemption.

## III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt conforms to the

definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 16,000 is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt.

## IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt is 16,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' For the purposes of this tolerance action, EPA has not assumed that 2-propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt has a common mechanism of toxicity with other substances, based on the anticipated absence of mammalian toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

## VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

## VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt.

## VIII. Other Considerations

### *A. Analytical Enforcement Methodology*

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

### *B. International Tolerances*

The Agency is not aware of any country requiring a tolerance for 2-propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

## IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt from the requirement of a tolerance will be safe.

## X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any

information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts or local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

### XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 12, 2009.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In §180.960, the table is amended by alphabetically adding the following polymer to read:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

* * * * *

| Polymer | CAS No. |
|---|---|
| * * * | * * |
| 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 1,2-propanediol mono-2-propenoate, potassium sodium salt, minimum number average molecular weight (in amu), 16,000. | 518026–64–7 |
| * * * | * * |

[FR Doc. E9–5245 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2008–0619; FRL–8396–8]**

### 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance under 40 CFR 180.960 for residues of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt; (CAS Reg. No. 251479–97–7); when used as an inert ingredient in a pesticide chemical formulation. BASF Corporation, submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt on food or feed commodities.

**DATES:** This regulation is effective March 11, 2009. Objections and requests for hearings must be received on or before May 11, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0619. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP

Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8353; e-mail address: *debesai.alganesh@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Access Electronic Copies of this Document?*

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

### *C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0619. in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 11, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0619, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of November 5, 2008 (73 FR 65852) (FRL–8385–1), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 8E7378) filed by BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt (CAS Reg. No. 251479–97–7). That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' and specifies factors EPA is to consider in establishing an exemption.

## III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major

identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 25,000 is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt.

## IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption,EPA considered that 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt is 25,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' For the purposes of this tolerance action, EPA has not assumed that 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt has a common mechanism of toxicity with other substances, based on the anticipated absence of mammalian toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

## VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

## VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt.

## VIII. Other Considerations

### *A. Analytical Enforcement Methodology*

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

### *B. International Tolerances*

The Agency is not aware of any country requiring a tolerance for 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

## IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt from the requirement of a tolerance will be safe.

## X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211,

entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts or local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

### XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 12, 2009.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371

■ 2. In §180.960, the table is amended by adding alphabetically the following polymer to read:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

* * * * *

| Polymer | CAS No. |
|---|---|
| * * * * | * |
| 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, sodium salt, minimum number average molecular weight (in amu), 25,000. | 251479–97–7 |
| * * * * | * |

[FR Doc. E9–5264 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2008–0618; FRL–8396–7]**

### 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl); Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxy poly (oxy-1,2-ethanediyl); (CAS Reg. No. 1007234–89–0); when used as an inert ingredient in a pesticide chemical formulation. BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) on food or feed commodities.

**DATES:** This regulation is effective March 11, 2009. Objections and requests for hearings must be received on or before May 11, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0618. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available,

e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-8353; e-mail address: *debesai.alganesh@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Access Electronic Copies of this Document?*

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

### *C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0618 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 11, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0618, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of November 5, 2008 (73 FR 65852) (FRL–8385–1), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 8E7377) filed by BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) (CAS Reg. No. 1007234–89–0). That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency received no substantive comments in response to the notice of filing.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...'' and specifies factors EPA is to consider in establishing an exemption.

## III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an

exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 17,000 is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-Propenoic acid, 2-hydroxyethyl ester, polymer with alpha-[4-(ethenyloxy)butyl]-omega-hydroxy poly (oxy-1,2-ethanediyl).

## IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) is 17,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' For the purposes of this tolerance action, EPA has not assumed that 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) has a common mechanism of toxicity with other substances, based on the anticipated absence of mammalian toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

## VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

## VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl).

## VIII. Other Considerations

### *A. Analytical Enforcement Methodology*

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

### *B. International Tolerances*

The Agency is not aware of any country requiring a tolerance for 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

## IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) from the requirement of a tolerance will be safe.

## X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules

from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts or local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

### XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 12, 2009.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In §180.960, the table is amended by adding alphabetically the following polymer to read:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

* * * * *

| Polymer | CAS No. |
|---|---|
| * * * * | * |
| 2-Propenoic acid, 2-hydroxyethyl ester, polymer with α-[4-(ethenyloxy)butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), minimum number average molecular weight (in amu), 17,000. | 1007234–89–0 |
| * * * * | * |

[FR Doc. E9–5267 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2008–0621; FRL–8397–1]**

### 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt; (CAS Reg. No. 250591–84–5); when used as an inert ingredient in a pesticide chemical formulation. BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt on food or feed commodities.

**DATES:** This regulation is effective March 11, 2009. Objections and requests for hearings must be received on or before May 11, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0621. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose

disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-8353; e-mail address: *debesai.alganesh@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Access Electronic Copies of this Document?*

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- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background and Statutory Findings

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Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...'' and specifies factors EPA is to consider in establishing an exemption.

## III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 24,000 daltons is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt.

## IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt is 24,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' For the purposes of this tolerance action, EPA has not assumed that 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt has a common mechanism of toxicity with other substances, based on the anticipated absence of mammalian toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

## VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

## VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt.

## VIII. Other Considerations

### *A. Analytical Enforcement Methodology*

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

### *B. International Tolerances*

The Agency is not aware of any country requiring a tolerance for 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

## IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl), sodium salt from the requirement of a tolerance will be safe.

## X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts or local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

### XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 12, 2009.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In §180.960, the table is amended by adding alphabetically a new polymer to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

* * * * *

| Polymer | CAS No. |
|---|---|
| * * * * | * |
| 2-Propenoic acid, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1, 2-ethanediyl), sodium salt, minimum number average molecular weight (in amu), 24,000. | 250591-84-5 |
| * * * * | * |

[FR Doc. E9–5273 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2008–0620; FRL–8396–9]**

### 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione; Tolerance Exemption

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance under 40 CFR 180.960 for residues of 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione; (CAS Reg. No. 955015–23–3); when used as an inert ingredient in a pesticide chemical formulation. BASF Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione on food or feed commodities.

**DATES:** This regulation is effective March 11, 2009. Objections and requests for hearings must be received on or before May 11, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0620. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available,

e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8353; e-mail address: *debesai.alganesh@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Access Electronic Copies of this Document?*

In addition to accessing electronically available documents at *http://www.regulations.gov*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*. You may also access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's pilot e-CFR site at *http://www.gpoaccess.gov/ecfr*.

### *C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0620 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 11, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0620, by one of the following methods.

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of November 5, 2008 (73 FR 65852) (FRL–8385–1), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 8E7379) filed by BASF Corporation, 100 Campus Drive, Florham Park, NJ 07932. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione (CAS Reg. No. 955015–23–3). That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any comments.

Section 408(c)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and use in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing an exemption from the requirement of a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...'' and specifies factors EPA is to consider in establishing an exemption.

## III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an

exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). The polymer, 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of 25,000 is greater than or equal to 10,000 daltons. The polymer contains less than 2% oligomeric material below MW 500 and less than 5% oligomeric material below MW 1,000.

Thus, 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione.

## IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione is 25,000 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

## V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' For the purposes of this tolerance action, EPA has not assumed that 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione has a common mechanism of toxicity with other substances, based on the anticipated absence of mammalian toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

## VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

## VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione.

## VIII. Other Considerations

### *A. Analytical Enforcement Methodology*

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

### *B. International Tolerances*

The Agency is not aware of any country requiring a tolerance for 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

## IX. Conclusion

Accordingly, EPA finds that exempting residues of 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and

2,5-furandione from the requirement of a tolerance will be safe.

### X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts or local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

### XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 12, 2009.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In §180.960, the table is amended by adding alphabetically the following polymer to read as follows:

**§ 180.960 Polymers; exemptions from the requirement of a tolerance.**

* * * * *

| Polymer | CAS No. |
|---|---|
| * * * | * * |
| 2-Propenoic acid, monoester with 1,2-propanediol, polymer with α-[4-(ethenyloxy) butyl]-ω-hydroxypoly (oxy-1,2-ethanediyl) and 2,5-furandione, minimum number average molecular weight (in amu), 25,000. | 955015-23-3 |
| * * * | * * |

[FR Doc. E9–5293 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 090224229–9245–01]**

**RIN 0648–AX72**

## Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Secretarial Final Interim Action

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final interim rule; temporary suspension of regulations and request for comments.

**SUMMARY:** In response to February 17, 2009, and February 23, 2009, Court Orders, issued by the U.S. District Court, District of Massachusetts, NMFS is temporarily suspending specific regulations implemented under Framework Adjustment (FW) 42 to the Northeast (NE) Multispecies Fishery Management Plan (FMP); namely differential days-at-sea (DAS) counting in the Gulf of Maine (GOM) and Southern New England (SNE). In addition, and also in response to the February 17, 2009, Court Order, NMFS is extending, by 30 days, the fishing year 2008 March 1 deadline for submission of DAS leasing applications.

**DATES:** Section 648.82(e)(2) is stayed effective March 6, 2009, through April 10, 2009, and the amendment to § 648.82(k)(3) introductory text is effective March 6, 2009, through March 31, 2009. Comments must be received by April 10, 2009.

**ADDRESSES:** You may submit comments, identified by 0648–AX72, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-rulemaking portal: *http://www.regulations.gov*.
- Mail: Paper, disk, or CD-ROM comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930–2276. Mark the outside of the envelope: ''Comments on NE Multispecies Final Interim Rule to Temporary Suspend Differential DAS.''
- Fax: (978) 281–9135.

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter ''N/A'' in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF formats only.

**FOR FURTHER INFORMATION CONTACT:** Thomas Warren, Fishery Policy Analyst, (978) 281–9347, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:** Amendment 13, implemented on April 27, 2004 (69 FR 22906), brought the FMP into conformance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requirements, including measures to end overfishing and rebuild all overfished groundfish stocks. In addition, Amendment 13 established a biennial FMP adjustment process that requires the New England Fishery Management Council (Council) to review the fishery periodically using the most recent scientific information available, recommend target total allowable catches (TACs), and recommend to the Regional Administrator any changes to management measures necessary to achieve the goals and objectives of the FMP.

Pursuant to this biennial adjustment, and the August 2005 stock assessment updates of the 19 stocks managed under the FMP (GARM II; Northeast Fisheries Science Center Reference Document 05–130), the Council developed management measures under FW 42 to reduce fishing mortality rates on six groundfish stocks that were identified as overfished in Amendment 13, in order to maintain compliance with the rebuilding program of the FMP. In addition, FW 42 included a rebuilding program for Georges Bank (GB) yellowtail flounder, and implemented target TACs, as well as incidental catch TACs, for fishing years 2006, 2007, and 2008. FW 42 also continued to authorize, as well as modify, specific management measures that helped to mitigate the economic and social impacts of the FMP.

FW 42 (71 FR 62156, October 23, 2006) became effective on November 22, 2006, and included the following management measures: Recreational restrictions; a vessel monitoring system (VMS) requirement for all groundfish DAS vessels; differential DAS counting in a portion of the GOM and SNE areas; commercial trip limits; renewal of the Regular B DAS Program; renewal of the DAS Leasing Program; renewal and modification of the Eastern U.S./Canada Haddock SAP; authorization of the GB Cod Fixed Gear Sector; modification of the Closed Area I Hook Gear Haddock SAP; modification of the Eastern U.S./Canada Management Area regulations to provide increased flexibility; modification of the DAS Transfer Program; standardization of requirements and gear performance incentives for the Special Management Programs; modification of the cod landing limit in the Eastern U.S./Canada Area; and modification of the SNE/Mid-Atlantic Regulated Mesh Area mesh requirement.

On November 21, 2006, the Commonwealth of Massachusetts and the State of New Hampshire filed a legal challenge of FW 42 and requested that it should be vacated on the basis that it violated several provisions of the Magnuson-Stevens Act, including National Standard 1. With respect to the National Standard 1 challenge, plaintiffs alleged that the Agency did not adequately consider the applicability of the mixed-stock exception in approving FW 42. As a result, plaintiffs claim that FW 42 measures, such as the 2:1 DAS counting provision, was overly strict.

On January 26, 2009, the U.S. District Court, District of Massachusetts, in the case of Commonwealth of Massachusetts and State of New Hampshire v. Carlos M. Gutierrez (Civil Action No. 06–12110–EFH), issued a Memorandum and Order that temporarily suspended FW 42, ''pending serious consideration and analysis'' of the mixed-stock exception. In its January 26, 2009, Order, the Court agreed with the Secretary of Commerce (Secretary) that the Guidelines are advisory, and stated that it believed that ''prudent agency administration dictates that Commerce at least seriously consider and analyze the Mixed-Stock Exception, which Commerce admits that it did not do.'' The Court ordered that ''this review process shall be completed no later than sixty (60) days from the date of this order, on which date, or sooner, Commerce shall file a report of its findings with the court.''

On February 2, 2009, the Secretary of Commerce filed two motions: A motion to alter or amend the Court's Order to lift the suspension of the FW 42 measure; and a motion to stay the temporary suspension of FW 42 pending resolution of the motion to alter or amend. On February 2, 2009, the Court denied the Secretary's motion to stay.

On February 13, 2009, the Commonwealth of Massachusetts and State of New Hampshire opposed, in part, the Secretary's February 2, 2009, motion to alter or amend and asked the Court to modify its Order by reinstating all FW 42 measures, except differential DAS counting (2:1 counting of DAS) in the GOM. The plaintiffs also requested that the March 1, 2009, deadline for submitting DAS leasing application to NMFS be extended by 30 days.

On February 17, 2009, the U.S. District Court of Massachusetts issued a second Order granting, in part, the Secretary's February 2, 2009, motion to alter or amend. Specifically, the February 17, 2009, Court Order reinstated FW 42, with the exception of 2:1 differential DAS counting and specified that differential DAS counting should remain suspended for 38 days from the date of the Order; i.e., through March 27, 2009. In addition, the Court ruled that the March 1, 2009, deadline for submitting applications for the DAS Leasing Program be extended by 30 days, i.e., March 31, 2009.

On February 19, 2009, NMFS filed an analysis of the mixed-stock exception with the Court which essentially concluded that this exception was not a viable alternative to consider or to implement in FW 42 because it could not be shown, in either the 1998 and 2009 National Standard 1 guidelines, that the threshold criterion regarding rebuilding programs specified for the mixed-stock exception would have been met.

On February 23, 2009, the Court issued a third Order, extending the suspension of differential DAS counting through April 10, 2009, to allow the Council time to review NMFS analysis of the mixed-stock exception, as submitted to the Court on February 19, 2009, as submitted to the Council during it's regularly scheduled April 2009 meeting.

In response to the February 17, 2009, and February 23, 2009, Court Orders, NMFS, through this final interim rule, is issuing a temporary suspension of the FW 42 differential DAS counting regulations through April 10, 2009, and extending the fishing year 2008 March 1 deadline for submission of DAS leasing applications to March 31.

**Classification**

It has been determined that this rule is ''not significant'' for purposes of E.O. 12866.

The Administrator, Northeast Region, NMFS, determined that the temporary suspension of differential DAS counting implemented through this final interim rule is necessary in order to comply with the Court Order. Therefore, this action represents a non-discretionary modification to the FMP, as required by a Court Order,

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries (AA) finds good cause to waive prior notice and opportunity for public comment. Prior notice and opportunity for public comment are impracticable, as NMFS is required by court order to immediately implement these changes, and has no discretion in making these modifications to the rule. For the same reason, the AA finds good cause to waive the 30–day delay in the effective date under 5 U.S.C. 553(d)(3).

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* are inapplicable.

It has been determined that the Environmental Assessment/Finding of No Significant Impact statement prepared for FW 42 remains applicable and that the scope of this action falls within the range of measures previously analyzed. This final interim rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866. This final interim rule does not contain policies with Federalism or ''takings'' implications as those terms are defined in E.O. 13132 and E.O. 12630, respectively. This final interim rule does not contain any new recordkeeping or reporting requirements.

**List of Subjects in 50 CFR Part 648**

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 5, 2009.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.82, paragraph (e)(2) is stayed effective March 6, 2009, through April 10, 2009, and paragraph (k)(3) introductory text is revised to read as follows:

**§ 648.82 Effort-control program for NE multispecies limited access vessels.**

* * * * *

(k) * * *

(3) *Application to lease NE multispecies DAS.* To lease Category A DAS, the eligible Lessor and Lessee vessel must submit a completed application form obtained from the Regional Administrator. The application must be signed by both Lessor and Lessee and be submitted to the Regional Office at least 45 days before the date on which the applicants desire to have the leased DAS effective. The Regional Administrator will notify the applicants of any deficiency in the application pursuant to this section. Applications may be submitted at any time prior to the start of the fishing year or throughout the fishing year in question, up until the close of business on March 1, unless otherwise specified in the this paragraph (k)(3). For the 2009 fishing year, applications may be submitted up until the close of business on March 31. Eligible vessel owners may submit any number of lease applications throughout the application period, but any DAS may only be leased once during a fishing year.

* * * * *

[FR Doc. E9–5191 Filed 3–6–09; 4:15 pm]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 0401120010–4114–02]**

**RIN 0648–XN66**

## Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery; Modification of the Yellowtail Flounder Landing Limit for the U.S./Canada Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; increase of landing limit.

**SUMMARY:** This action increases the Georges Bank (GB) yellowtail flounder trip limit to 5,000 lb (2,268 kg) for NE multispecies days-at-sea (DAS) vessels fishing in the U.S./Canada Management Area. This action is authorized by the regulations implementing Amendment 13 to the NE Multispecies Fishery Management Plan (FMP) and is intended to increase the likelihood of harvesting the total allowable catch (TAC) for GB yellowtail flounder without exceeding it during the 2008 fishing year. This action is being taken to allow vessels to fully harvest the TACs for transboundary stocks of GB cod, haddock, and yellowtail flounder under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Effective 0001 hours March 9, 2009, through April 30, 2009.

**FOR FURTHER INFORMATION CONTACT:** Allison Murphy, Fishery Management Specialist, (978) 281–9122, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the GB yellowtail flounder landing limit within the U.S./Canada Management Area are found at 50 CFR 648.85(a)(3)(iv)(C) and (D). The regulations authorize vessels issued a valid limited access NE multispecies permit and fishing under a NE multispecies DAS to fish in the U.S./Canada Management Area, as defined at § 648.85(a)(1), under specific conditions. The TAC for GB yellowtail flounder for the 2008 fishing year (May 1, 2008 - April 30, 2009) was set at 1,950 mt (73 FR 16572, March 28, 2008), a

217–percent increase from the TAC for the 2007 fishing year.

The regulations at § 648.85(a)(3)(iv)(D) authorize the Administrator, Northeast (NE) Region, NMFS (Regional Administrator) to increase or decrease the trip limits in the U.S./Canada Management Area to prevent over-harvesting or under-harvesting the TAC allocation. On April 29, 2008 (73 FR 23130), based upon the 2008 TAC for GB yellowtail flounder and projections of harvest rates in the fishery, the trip limit for GB yellowtail flounder was set at 5,000 lb (2,268 kg) for the 2008 fishing year. On October 22, 2008 (73 FR 63652) the trip limit for GB yellowtail flounder was reduced to 2,500 lb (1,134 kg) to slow the rate of harvest and to prevent a premature closure of the Eastern U.S./Canada Management Area and, therefore, reduced opportunities to fish for Eastern GB cod and haddock in the Eastern U.S./Canada Area.

According to the most recent Vessel Monitoring System (VMS) reports and other available information, the cumulative GB yellowtail flounder catch is approximately 67.2 percent of the TAC as of February25, 2009. Increasing the GB yellowtail flounder trip limit to 5,000 lb (2,268 kg) from 2,500 lb (1,134 kg) is expected to increase landings of GB yellowtail flounder, reduce discards, and result in the achievement of the TAC during the fishing year, without exceeding it. Based on this information, the Regional Administrator is increasing the current 2,500–lb (1,134–kg) yellowtail flounder trip limit in the U.S./Canada Management Area to 5,000 lb (2,268 kg) per trip, effective 0001 hours local time March 9, 2009, through April 30, 2009.

GB yellowtail flounder landings will continue to be closely monitored. Further inseason adjustments to increase or decrease the trip limit may be considered, based on updated catch data and projections. Should 100 percent of the TAC allocation for GB yellowtail flounder be projected to be harvested, all vessels would be prohibited from harvesting, possessing, or landing yellowtail flounder from the entire U.S./Canada Management Area, and the Eastern U.S./Canada Area would be closed to limited access NE multispecies DAS vessels for the remainder of the fishing year.

## Classification

This action is authorized by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(3)(B) and (d)(3), there is good cause to waive prior notice and opportunity for public comment; as well as the delayed effectiveness for this action, because prior notice and comment, and a delayed effectiveness, would be impracticable and contrary to the public interest. The regulations under § 658.85(a)(3)(iv)(D) grant the Regional Administrator the authority to adjust the GB yellowtail flounder trip limit to prevent over-harvesting or under-harvesting the TAC allocation. This action would relieve a restriction by increasing the GB yellowtail flounder trip limit for all NE multispecies DAS vessels fishing in the U.S./Canada Management Area through April 30, 2009, to facilitate the harvest of the TAC while ensuring that the TAC will not be exceeded during the 2008 fishing year. This will result in decreased regulatory discards of GB yellowtail flounder, increase revenue for the NE multispecies fishery, and increase the chances of achieving optimum yield in the groundfish fishery.

This action is authorized by the regulations at § 648.85(a)(3)(iv)(D) to facilitate achieving the U.S/Canada Management Area TACs. It is important to take this action immediately because the current restrictive GB yellowtail flounder trip limit has prevented the NE multispecies fishery from harvesting the TAC at a rate that will result in complete harvest by the end of the 2008 fishing year. Delay in the implementation of this action could result in further wasteful discards of GB yellowtail flounder and decrease the opportunity available for vessels to fully harvest the 2008 GB yellowtail flounder TAC.

The information necessary to take this action became available only recently. The time necessary to provide for prior notice, opportunity for public comment, and delayed effectiveness for this action would prevent NE multispecies DAS vessels from efficiently targeting GB yellowtail flounder in the U.S./Canada Management Area. The Regional Administrator's authority to increase trip limits for GB yellowtail flounder in the U.S./Canada Management Area to help ensure that the shared U.S./Canada stocks of fish are harvested, but not exceeded, was considered and open to public comment during the development of Amendment 13 to the FMP and Framework Adjustment 42 to the FMP. Therefore, any negative effect the waiving of public comment and delayed effectiveness may have on the public is mitigated by these factors.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 5, 2009.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E9–5171 Filed 3–6–09; 4:15 pm]

**BILLING CODE 3510–22–S**

# Proposed Rules

Federal Register
Vol. 74, No. 46
Wednesday, March 11, 2009

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 340

**[Docket No. APHIS–2008–0023]**

### Introduction of Organisms and Products Altered or Produced Through Genetic Engineering

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule; notice of public scoping session and extension of public comment period.

**SUMMARY:** We are advising the public that the Animal and Plant Health Inspection Service (APHIS) is holding a public scoping session for issue-focused public meeting(s) to be held in April 2009 on the APHIS proposed rule, ''Importation, Interstate Movement, and Release Into the Environment of Certain Genetically Engineered Organisms.'' The purpose of the scoping session is to discuss with all interested parties the agenda and format for the April 2009 issue meeting(s).

**DATES:** The scoping session will be on March 13, 2009, from 9 a.m. to 4 p.m.

**ADDRESSES:** The scoping session will be held at USDA Center at Riverside, 4700 River Road, Riverdale, MD, in Conference Room A. For directions or facilities information, call (301) 734–8010.

*Other Information*: Additional details regarding the format of the meeting are available at *http://www.aphis.usda.gov/biotechnology/340/340_index.shtml*.

**FOR FURTHER INFORMATION CONTACT:** If you plan to attend the scoping session, please contact Mr. Richard Coker, BRS, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1238; (301) 734–5720.

**SUPPLEMENTARY INFORMATION:**

#### Background

On October 9, 2008, APHIS published in the **Federal Register** (73 FR 60007–60048, Docket No. APHIS–2008–0023) a proposal [1] to revise our regulations regarding the importation, interstate movement, and environmental release of certain genetically engineered (GE) organisms. The proposed revisions would bring the regulations into alignment with provisions of the Plant Protection Act (7 U.S.C. 7701 *et seq.*) and update the regulations in response to advances in genetic science and technology and our accumulated experience in implementing the current regulations. APHIS sought public comment on the proposal from October 9, 2008, to November 24, 2008.

On January 16, 2009, APHIS published in the **Federal Register** (74 FR 2907–2909, Docket No. APHIS–2008–0023) a notice announcing the reopening of the public comment period for the proposed rule for an additional 60 days, particularly seeking additional comments on the following four issues:

*Issue 1*: Scope of the regulation and which GE organisms should be regulated.

*Issue 2*: Incorporation into APHIS regulations of the Plant Protection Act's noxious weed authority.

*Issue 3*: Elimination of notification procedure and revision of the permit procedure.

*Issue 4*: Environmental release permit categories and regulation of GE crops that produce pharmaceutical and industrial compounds.

All four issues were among those that have been raised in the comments we have received so far on the proposed rule. In some cases commenters identified concerns about these issues, but did not provide specific suggestions as to how the proposed rule could be modified to address these concerns. By extending the comment period, APHIS is seeking to increase the transparency of the rulemaking process and elicit more specific information and detailed suggestions regarding these issues. We noted in the January 2009 notice reopening the comment period that APHIS intends to hold an additional public meeting on the proposed rule during the extended public comment period. We intend to hold additional public meeting(s) in the greater Washington, DC area in April 2009; to ensure that we identify the full range of topics for the April meeting's agenda, we will be holding a scoping session on March 13, 2009.

The March 13, 2009 scoping session will begin with a discussion of the topics to be included on the agenda for the April 2009 meeting(s). In a previous notice published in the **Federal Register** (74 FR 2907–2909, Docket No. APHIS–2008–0023) APHIS outlined four issues on which the Agency is seeking comment. Those four issues will be included in the agenda for the April 2009 meeting(s), along with other significant issues deemed appropriate by APHIS based on recommendations made by interested parties at the scoping session. The meeting participants at the March 13 meeting will also be asked to offer recommendations regarding collaborative meeting formats that would best ensure agenda issues will be frankly and fully explored in the April 2009 meeting(s).

Those wishing to attend the March 13 scoping meeting should contact Mr. Richard Coker at (301) 734–5720. Also contact Mr. Coker if you require a sign language interpreter or other special accommodations. Those unable to attend the scoping session may submit comments or suggestions for the April issue meeting(s) to APHIS at the address listed under **FOR FURTHER INFORMATION CONTACT** no later than March 20, 2009.

#### Parking and Security Procedures

Please note that a fee of $3.00 in exact change is required to enter the parking lot at the USDA Center at Riverside. The machine accepts $1 bills or quarters.

Upon entering the building, visitors should inform security personnel that they are attending the 340 Proposed Rule public meeting. State-issued photo identification is required and all bags will be screened. Security personnel will direct visitors to the registration tables located outside of Conference Room A on the first floor. Registration upon arrival is required for all participants.

*Purpose and Nature of the April 2009 Issue Meeting(s)*

The April 2009 issue meeting(s) will provide an opportunity for interested persons to discuss in a collaborative forum the key concerns that were raised during the comment period on the

[1] To view the proposed rule, supporting documents, and any comments we have received, and to submit written comments on the proposed rule, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0023*.

proposed rule with USDA officials and with one another. The issue-focused meeting(s) will be open to the public and announced in advance in the **Federal Register**. The proceedings will be transcribed, and the transcripts will be made part of the rulemaking record. The meeting(s) is intended to provide a forum for all interested parties to attend and participate in all the discussions to foster focused, substantive dialogue on the key issues.

Tentatively identified agenda items for consideration at the April issue meeting(s) include the four issues outlined above from the January 16, 2009 **Federal Register** notice.

*Extension of Comment Period*

APHIS is extending the comment period for the proposed rule, which currently closes on March 17, 2009, until 60 days following the April meeting(s) in order to include in the administrative record the transcripts of the scoping session and public meeting(s), written comments submitted by persons unable to attend the meeting(s), and other written comments submitted by interested parties on the matters addressed at the public meeting(s). Persons wishing to submit written comments on the proposed rule may continue to do so until 60 days after the April public meeting(s) through the Regulations.gov Web site (see footnote 1). The new date for the close of the comment period will be provided in our notice announcing the date and other details of the April 2009 issue meeting(s). We will accept all comments we receive between March 18, 2009 (the day after the close of the current comment period) and the date of the notice that we will publish to announce the date(s) of April 2009 issue meeting(s) and formally reopen the comment period.

Done in Washington, DC, this 9th day of March 2009.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E9–5372 Filed 3–9–09; 4:15 pm]

**BILLING CODE 3410–34–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2008–0923; FRL–8397–7]**

## Exemptions From the Requirement of a Tolerance; Proposed Technical Amendments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; technical amendments.

**SUMMARY:** This document proposes minor technical revisions of certain commodity terms listed under 40 CFR part 180, subpart D. EPA is proposing this action to eventually establish a uniform listing of commodity terms.

**DATES:** Comments must be received on or before May 11, 2009.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0923, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

*Instructions*: Direct your comments to docket ID number EPA–HQ–OPP–2008–0923. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

*Docket*: All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

**FOR FURTHER INFORMATION CONTACT:** Stephen Morrill, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8319; fax number: (703) 308–7026; e-mail address: *morrill.stephen@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does This Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially

affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0923. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

*What Action Is the Agency Taking?*

EPA's Office of Pesticide Programs (OPP) has developed a commodity vocabulary database entitled *Food and Feed Commodity Vocabulary*. The database was developed to consolidate all the major OPP commodity vocabularies into one standardized vocabulary. As a result, all future pesticide tolerances issued under 40 CFR part 180 will use the ''preferred commodity term'' as listed in the aforementioned database. This is the ninth in a series of documents revising the terminology of commodity terms listed under 40 CFR part 180. Eight final rules, revising pesticide tolerance nomenclature, have published in the **Federal Register**: June 19, 2002 (67 FR 41802) (FRL–6835–2); June 21, 2002 (67 FR 42392) (FRL–7180–1); July 1, 2003 (68 FR 39428) (FRL–7308–9) and (68 FR 39435) (FRL–7316–9); December 13, 2006 (71 FR 74802) (FRL–8064–3); September 18, 2007 (72 FR 53134) (FRL–8126–5) corrected on October 31, 2007 (72 FR 61535) (FRL–8151–4); and October 10, 2008, (73 FR 60151) (FRL–8376–1). This revision process will establish a uniform presentation of existing commodity terms under 40 CFR part 180.

This document proposes many revisions to the commodity terms in 40 CFR part 180, subpart D. These proposed revisions, if adopted, would replace certain commodity terms that are no longer used by EPA with the appropriate matching term in the ''Food and Feed Vocabulary.'' The sections affected are listed in the Table.

| In Section | In paragraph | Remove the term | Add in its place the term |
|---|---|---|---|
| 180.1011 | (b) | beeswax and honey | honey and honeycomb |
| 180.1019 | (b) | meat | cattle, meat; goat, meat; hog, meat; horse, meat; sheep, meat; |
| 180.1019 | (b) | poultry | poultry, fat; poultry, meat; poultry, meat, byproducts |
| 180.1019 | (b) | eggs | egg |
| 180.1020 | (a) Commodity list | Bean, dry, edible | Bean, dry, seed |
| 180.1020 | (a) | Corn, fodder | Corn, field, stover; Corn, pop, stover; |
| 180.1020 | (a) | Corn, forage | Corn, field, forage |
| 180.1020 | (a) | Corn, grain | Corn, field, grain; Corn, pop, grain |
| 180.1020 | (a) | Cottonseed | Cotton, undelinted, seed |
| 180.1020 | (a) | Flaxseed | Flax, seed |
| 180.1020 | (a) | Guar beans | Guar, seed |
| 180.1020 | (a) | Peas, southern | Cowpea, forage; Cowpea, hay; Cowpea, seed |
| 180.1020 | (a) | Peppers, chili | Pepper, chili |

| In Section | In paragraph | Remove the term | Add in its place the term |
|---|---|---|---|
| 180.1020 | (a) | Potatoes | Potato |
| 180.1020 | (a) | Rice | Rice, grain; Rice straw |
| 180.1020 | (a) | Safflower, grain | Safflower, seed |
| 180.1020 | (a) | Sorghum, grain | Sorghum, grain, grain |
| 180.1020 | (a) | Sorghum, fodder | Sorghum, grain, stover |
| 180.1020 | (a) | Soybeans | Grain, aspirated fractions; Soybean, forage; Soybean, hay; Soybean, seed |
| 180.1020 | (a) | Sunflower seed | Sunflower, seed |
| 180.1020 | (b) | Wheat | Wheat, forage; Wheat, grain; Wheat, hay; Wheat, straw |
| 180.1021 | (a) | Meat | Cattle, meat; Goat, meat; Hog, meat; Horse, meat; sheep, meat |
| 180.1021 | (a) | Poultry | Poultry, fat; Poultry, meat; Poultry, meat byproducts |
| 180.1021 | (a) | Eggs | Egg |
| 180.1022 | | eggs | egg |
| 180.1022 | | poultry | poultry, fat; poultry, meat; poultry, meat byproducts |
| 180.1023 | (a) | alfalfa | alfalfa, forage; alfalfa, hay; alfalfa, seed |
| 180.1023 | (a) | barley grain | barley, grain |
| 180.1023 | (a) | Bermuda grass | Bermudagrass, forage; Bermudagrass, hay |
| 180.1023 | (a) | bluegrass | bluegrass, forage; bluegrass, hay |
| 180.1023 | (a) | brome grass | bromegrass, forage; bromegrass, hay |
| 180.1023 | (a) | clover | clover, forage; clover, hay |
| 180.1023 | (a) | corn grain | corn, field, grain; corn, pop, grain; corn, sweet, kernel plus cob with husks removed |
| 180.1023 | (a) | cowpea hay | cowpea, hay |
| 180.1023 | (a) | fescue | fescue, forage; fescue, hay |
| 180.1023 | (a) | lespedeza | lespedeza, forage; lespedeza, hay |
| 180.1023 | (a) | lupines | lupin |
| 180.1023 | (a) | oat grain | oat, grain |
| 180.1023 | (a) | orchard grass | orchardgrass, forage; orchardgrass, hay |
| 180.1023 | (a) | peanut hay | peanut, hay |
| 180.1023 | (a) | peavine hay | pea, field, hay |
| 180.1023 | (a) | rye grass | ryegrass, Italian, hay |
| 180.1023 | (a) | sorghum grain | sorghum, grain, grain |
| 180.1023 | (a) | soybean hay | soybean, hay |

| In Section | In paragraph | Remove the term | Add in its place the term |
|---|---|---|---|
| 180.1023 | (a) | sudan grass | sudangrass, forage; sudangrass, hay |
| 180.1023 | (a) | timothy | timothy, forage; timothy, hay |
| 180.1023 | (a) | vetch | vetch, forage; vetch, hay |
| 180.1023 | (a) | wheat grain | wheat, grain |
| 180.1023 | (b) | meat and meat byproducts of cattle, sheep, hogs, goats, horses | cattle, meat; cattle, meat byproducts; goat, meat; goat, meat byproducts; hog, meat; hog, meat byproducts; horse, meat; horse, meat byproducts; sheep, meat; sheep, meat byproducts |
| 180.1023 | (b) | poultry | poultry, fat; poultry, meat; poultry, meat byproducts |
| 180.1023 | (b) | eggs | egg |
| 180.1027 | (c) | including corn, cottonseed, beans, lettuce, okra, peppers, sorghum, soybeans, and tomatoes. | [Removed] |
| 180.1035 | | honey and beeswax | honey and honeycomb |
| 180.1037 | (a) | cottonseed | cotton, undelinted, seed |
| 180.1037 | (b) | artichokes | artichoke |
| 180.1043 | | cottonseed | cotton, undelinted, seed |
| 180.1054 | (b) | grapes | grape |
| 180.1057 | | citrus fruit | fruit, citrus |
| 180.1058 | | alfalfa hay | alfalfa, hay |
| 180.1058 | | Bermuda grass hay | Bermudagrass, hay |
| 180.1058 | | blue grass hay | bluegrass, hay |
| 180.1058 | | brome grass hay | bromegrass, hay |
| 180.1058 | | clover hay | clover, hay |
| 180.1058 | | corn grain | corn, field, grain; corn, pop, grain |
| 180.1058 | | oat grain | oat, grain |
| 180.1058 | | orchard grass hay | orchardgrass, hay |
| 180.1058 | | sorghum grain | sorghum, grain, grain |
| 180.1058 | | sudan grass hay | sudangrass, hay |
| 180.1058 | | rye grass hay | ryegrass, Italian, hay |
| 180.1058 | | timothy hay | timothy, hay |
| 180.1070 | | crop group Brassica (cole) leafy vegetables | Vegetable, brassica, leafy, group 5 |
| 180.1070 | | radishes | radish, roots; radish, tops |
| 180.1073 | | peaches | peach |
| 180.1073 | | quinces | quince |
| 180.1073 | | nectarines | nectarine |
| 180.1073 | | macadamina nuts | nut, macadamia |
| 180.1075 | | Rice grain | Rice, grain |

| In Section | In paragraph | Remove the term | Add in its place the term |
|---|---|---|---|
| 180.1075 | | Soybeans | Soybean, seed; Soybean, forage; Soybean, hay; Grain, aspirated fractions |
| 180.1076 | (b) | pasture and rangeland forage | grass, pasture, forage; grass, rangeland, forage |
| 180.1083 | (a) and (b) | Peas | Pea, dry, seed; Pea, succulent |
| 180.1087 | | almond | almond; almond, hulls |
| 180.1087 | | cotton | cotton, undelinted seed; cotton, gin byproducts |
| 180.1087 | | soybeans | soybean, seed; soybean, forage; soybean, hay; grain, aspirated fractions |
| 180.1087 | | potatoes | potato |
| 180.1087 | | sugarbeets | beet, sugar, roots; beet, sugar, tops |
| 180.1087 | | tomatoes | tomato |
| 180.1087 | | bell peppers | pepper, bell |
| 180.1087 | | strawberries | strawberry |
| 180.1087 | | eggplants | eggplant |
| 180.1087 | | cucumbers | cucumber |
| 180.1087 | | carrots | carrot, roots |
| 180.1087 | | radish | radish, roots; radish, tops |
| 180.1087 | | turnips | turnip, roots; turnip, tops |
| 180.1087 | | onions | onion |
| 180.1087 | | peas | pea, dry, seed; pea, succulent |
| 180.1087 | | melons | melon |
| 180.1087 | | grapes | grape |
| 180.1087 | | walnuts | walnut |
| 180.1092 | | beeswax and honey | honey and honeycomb |
| 180.1097 | | grapes | grape |
| 180.1103 | | RACs | raw agicultural commodities |
| 180.1113 | | grasses, forage and hay | grass, forage; grass, hay |
| 180.1113 | | rice, grain and straw | rice, grain; rice, straw |
| 180.1113 | | soybeans | Grain, aspirated fractions; soybean, seed |
| 180.1113 | | soybean, forage and hay | soybean, forage; soybean, hay |
| 180.1113 | | wild rice | rice, wild grain |
| 180.1178 | | honey and beeswax | honey and honeycomb |
| 180.1196 | (a) | raw agricultural commodities, in processed commodities | all food commodities |
| 180.1196 | (b) | all raw and processed food commodities | all food commodities |

| In Section | In paragraph | Remove the term | Add in its place the term |
|---|---|---|---|
| 180.1206 | (a) | cotton and its food/feed commodities | cotton, gin byproducts; cotton, hulls; cotton, meal; cotton, refined oil; cotton, undelinted seed |
| 180.1206 | (c) | on corn | in or on grain, aspirated fractions; corn, field, forage: corn, field flour; corn, field, grain; corn, field, grits; corn, field, starch; corn, field, stover; corn, pop, grain; corn, pop, stover; corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; corn, sweet, stover |
| 180.1219 | | corn, sweet (K+CWHR) | corn, sweet, kernel plus cob with husks removed |
| 180.1254 | | on peanut and its food/feed commodities | In or on peanut; peanut hay; peanut, meal; peanut, refined oil |
| 180.1258 | | alfalfa | Alfalfa, seed; alfalfa, hay |
| 180.1258 | | barley grain | barley, grain |
| 180.1258 | | Bermuda grass | bermudagrass, hay |
| 180.1258 | | bluegrass | bluegrass, hay |
| 180.1258 | | brome grass | bromegrass, hay |
| 180.1258 | | clover | clover, hay |
| 180.1258 | | corn grain | corn, field, grain; corn, pop, grain |
| 180.1258 | | cowpea hay | cowpea, hay |
| 180.1258 | | fescue hay | fescue, hay |
| 180.1258 | | lespedeza | lespedeza, hay |
| 180.1258 | | lupines | lupin |
| 180.1258 | | oat grain | oat, grain |
| 180.1258 | | orchard grass | orchardgrass, hay |
| 180.1258 | | peanut grass | peanut, hay |
| 180.1258 | | Timothy | timothy, hay |
| 180.1258 | | vetch | vetch, hay |
| 180.1258 | | wheat grain | wheat, grain |
| 180.1261 | | tomatoes and peppers | pepper and tomato |
| 180.1274 | | wheat and barley | grain, aspirated fractions; barley, grain: barley, hay; barley, straw; wheat, grain; wheat, forage; wheat, hay; wheat, straw |
| 180.1276 | | grass and grass hay | grass, forage; grass, hay |
| 180.1279 | | cucurbits | cucurbit |

## III. Statutory and Executive Order Reviews

This document proposes technical amendments to the Code of Federal Regulations which have no substantive impact on the underlying regulations, and does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical amendment is not a ''significant regulatory action'' subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That*

*Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action proposes technical amendments to the Code of Federal Regulations which have no substantive impact on the underyling regulations. These technical amendments will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

**List of Subjects in 40 CFR Part 180**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: January 21, 2009.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

Therefore, it is proposed that 40 CFR chapter I, subpart D be amended as follows:

1. The authority citation for part 180 would continue to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

2. In § 180.1011, by revising paragraph (b) to read as follows:

**§ 180.1011 Viable spores of the microorganism Bacillus thuringiensis Berliner; exemption from the requirement of a tolerance.**

* * * * *

(b) Exemption from the requirement of a tolerance is established for residues of the microbial insecticide *Bacillus thuringiensis* Berliner, as specified in paragraph (a) of this section, in or on honey and honeycomb and all other raw agricultural commodities when it is applied either to growing crops, or when it is applied after harvest in accordance with good agricultural practices.

3. In § 180.1019, by revising paragraph (b) to read as follows:

**§ 180.1019 Sulfuric acid; exemption from the requirement of a tolerance.**

* * * * *

(b) Residues of sulfuric acid are exempted from the requirement of a tolerance in cattle, meat; goat, meat; hog, meat; horse, meat; sheep, meat; poultry, fat; poultry, meat; poultry, meat, byproducts; egg; milk; fish, shellfish, and irrigated crops when it results from the use of sulfuric acid as an inert ingredient in a pesticide product used in irrigation conveyance systems and lakes, ponds, reservoirs, or bodies of water in which fish or shellfish are cultivated. The sulfuric acid is not to exceed 10% of the pesticide formulation (non-aerosol formulations only).

4. In § 180.1020, by revising the Commodity list in paragraph (a) and the table in paragraph (b) to read as follows:

**§ 180.1020 Sodium chlorate; exemption from the requirement of a tolerance.**

(a) * * *

| Commodity |
|---|
| Bean, dry, seed |
| Corn, field, stover |
| Corn, pop, stover |
| Corn, field, forage |
| Corn, field, grain |
| Corn, pop, grain |
| Cotton, undelinted seed |
| Flax, seed |
| Flax, straw |
| Guar, seed |
| Cowpea, seed |
| Cowpea, hay |
| Cowpea, forage |
| Pepper, chili |
| Potato |
| Rice, grain |
| Rice, straw |
| Safflower, seed |
| Sorghum, grain, grain |
| Sorghum, grain, stover |
| Sorghum, forage |
| Soybean, seed |

Soybean, forage
Soybean, hay
Grain, aspirated fractions
Sunflower, seed

(b) * * *

| Commodity | Parts per million | Expiration/revocation date |
|---|---|---|
| Wheat, forage | NA | 12/31/06 |
| Wheat, grain | NA | 12/31/06 |
| Wheat, hay | NA | 12/31/06 |
| Wheat, straw | NA | 12/31/06 |

5. In § 180.1021, by revising paragraph (a) introductory text to read as follows:

**§ 180.1021 Copper; exemption from the requirement of a tolerance.**

(a) Copper is exempted from the requirement of a tolerance in cattle, meat; goat, meat; hog, meat; horse, meat; sheep, meat; milk, poultry, fat; poultry, meat; poultry, meat byproducts; egg, fish, shellfish, and irrigated crops when it results from the use of:

* * * * *

6. Section 180.1022 is revised to read as follows:

**§ 180.1022 Iodine-detergent complex; exemption from the requirement of a tolerance.**

The aqueous solution of hydriodic acid and elemental iodine, including one or both of the surfactants (a) polyoxypropylene-polyoxyethylene glycol nomionic block polymers (minimum average molecular weight 1,900) and (b) α-(p- nonylphenyl)-*omega*- hydroxypoly (oxyethylene) having a maximum average molecular weight of 748 and in which the nonyl group is a propylene trimer isomer, is exempted from the requirement of a tolerance for residues in egg, and poultry, fat; poultry, meat; poultry, meat byproducts when used as a sanitizer in poultry drinking water.

7. In § 180.1023, by revising paragraphs (a) and (b) to read as follows:

**§ 180.1023 Propanoic acid; exemptions from the requirement of a tolerance.**

(a) Postharvest application of propanoic acid or a mixture of methylene bispropionate and oxy(bismethylene) bisproprionate when used as a fungicide is exempted from the requirement of a tolerance for residues in or on the following raw agricultural commodities: Alfalfa, forage; alfalfa, hay; alfalfa, seed; barley, grain; Bermudagrass, forage; Bermudagrass, hay; bluegrass, forage; bluegrass, hay; bromegrass, forage; bromegrass, hay; clover, forage; clover, hay; corn, field, grain; corn, pop, grain; cowpea, hay; fescue, forage; fescue, hay; lespedeza, forage; lespedeza, hay; lupin; oat, grain; orchardgrass, forage; orchardgrass, hay; peanut, hay; pea, field, hay; ryegrass, Italian, hay; sorghum, grain, grain; soybean, hay; sudangrass, forage; sudangrass, hay; timothy, forage; timothy, hay; vetch, forage; vetch, hay; and wheat, grain.

(b) Propanoic acid is exempt from the requirement of a tolerance for residues in or on cattle, meat; cattle, meat byproducts; goat, meat; goat, meat byproducts; hog, meat; hog meat byproducts; horse, meat; horse, meat byproducts; sheep, meat; sheep meat byproducts; and, poultry, fat; poultry meat; poultry meat byproducts; milk, and egg when applied as a bactericide/fungicide to livestock drinking water, poultry litter, and storage areas for silage and grain.

* * * * *

8. In § 180.1027, by revising paragraph (c) to read as follows:

**§ 180.1027 Nuclear polyhedrosis virus of Heliothis zea; exemption from the requirement of a tolerance.**

* * * * *

(c) Exemptions from the requirement of a tolerance are established for the residues of the microbial insecticide *Heliothis zea* NPV, as specified in paragraphs (a) and (b) of this section, in or on all agricultural commodities.

9. Section 180.1035 is revised to read as follows:

**§ 180.1035 Pine oil; exemption from the requirement of a tolerance.**

Pine oil is exempted from the requirement of a tolerance for residues in the raw agricultural commodities honey and honeycomb, when present therein as a result of its use as a deodorant at no more than 12 percent in formulation with the bee repellent butanoic anhydride applied in an absorbent pad over the hive.

10. Section 180.1037 is revised to read as follows:

**§ 180.1037 Polybutenes; exemption from the requirement of a tolerance.**

(a) Polybutenes are exempt from the requirement of a tolerance for residues in or on the raw agricultural commodity cotton, undelinted seed when used as a sticker agent for formulations of the attractant gossyplure (1:1 mixture of (*Z,Z*)- and (*Z,E*)-7,11-hexadecadien-1-ol acetate) to disrupt the mating of the pink bollworm.

(b) Polybutenes are exempt from the requirement of a tolerance for residues in or on the raw agricultural commodity artichoke when used as a sticker agent in multi-layered laminted controlled-release dispensers of (Z)-11-hexaadecenal to disrupt the mating of the artichoke plume moth.

11. Section 180.1043 is revised to read as follows:

**§ 180.1043 Gossyplure; exemption from the requirement of a tolerance.**

The pheromone gossyplure, a 1:1 mixture of (*Z,Z*)- and (*Z,E*)-7,11-hexadecadien-1-ol acetate) is exempt from the requirement of a tolerance in or on the raw agricultural commodity cotton, undelinted seed when applied to cotton from capillary fibers.

12. In § 180.1054, by revising paragraph (b) to read as follows:

**§ 180.1054 Calcium hypochlorite; exemptions from the requirement of a tolerance.**

* * * * *

(b) Calcium hypochlorite is exempted from the requirement of a tolerance in or on grape when used as a fumigant postharvest by means of a chlorine generator pad.

13. Section 180.1057 is revised to read as follows:

**§ 180.1057 Phytophthora palmivora; exemption from requirement of tolerance.**

*Phytophthora palmivora* is exempted from the requirement of a tolerance in or on the raw agricultural commodity fruit, citrus.

14. Section 180.1058 is revised to read as follows:

**§ 180.1058 Sodium diacetate; exemption from the requirement of a tolerance.**

Sodium diacetate, when used postharvest as a fungicide, is exempt from the requirement of a tolerance for residues in or on alfalfa, hay; bermudagrass, hay; bluegrass, hay; bromegrass, hay; clover,hay; corm, field, grain; corn, pop, grain; oat, grain; orchardgrass, hay; sorghum, grain, grain; sudangrass, hay; ryegrass, italian, hay; timothy, hay.

15. Section 180.1070 is revised to read as follows:

**§ 180.1070 Sodium chlorite; exemption from the requirement of a tolerance.**

Sodium chlorite is exempted from the requirement of a tolerance for residues when used in accordance with good agricultural practice as a seed-soak treatment in the growing of the raw agricultural commodities vegetable, brassica, leafy, group 5 and radish, roots and radish, tops.

16. Section 180.1073 is revised to read as follows:

**§ 180.1073 Isomate-M; exemption from the requirement of a tolerance.**

The oriental fruit moth pheromone (Isomate-M) (Z-8-dodecen-l-yl acetate, E-8-dodecen-l-yl acetate, Z-8-dodecen-l-ol) is exempt from the requirement of a tolerance in or on all the raw agricultural commodities (food and feed) including, peach; quince; nectarine; and nut, macadamia when used in orchards with encapsulated polyethylene tubing to control oriental fruit moth.

17. In § 180.1075, by revising the Commodity list to read as follows:

**§ 180.1075 Colletotrichum gloeosporioides f. sp. aeschynomene; exemption from the requirement of a tolerance.**

* * * * *

**Commodity**

Aspirated grain fractions
Rice, grain
Soybean, forage
Soybean, hay
Soybean, seed

18. In § 180.1076, by revising paragraph (b) to read as follows:

**§ 180.1076 Viable spores of the microorganism *Bacillus popilliae*; exemption from the requirement of a tolerance.**

* * * * *

(b) Exemption from the requirement of a tolerance is established for residues of the microbial insecticide *Bacillus popilliae*, as specified in paragraph (a) of this section in or on grass, pasture, forage and grass, rangeland, forage when it is applied to growing crops in accordance with good agricultural practices.

19. In § 180.1083, by revising paragraphs (a) and (b) to read as follows:

**§ 180.1083 Dimethyl sulfoxide; exemption from the requirement of a tolerance.**

* * * * *

(a) Carbaryl (1-naphthyl methylcarbamate)
Pea, dry, seed
Pea, succulent

(b) *O*-*O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
Pea, dry, seed
Pea, succulent

20. Section 180.1087 is revised to read as follows:

**§ 180.1087 Sesame stalks; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of the biorational nematicide sesame stalk in or on the following raw agricultural commodities: Almond; almond, hulls; cotton, undelinted seed; cotton, gin byproducts; soybean, seed; soybean, forage; soybean, hay; aspirated grain fractions; potato; beet, sugar, roots; beet, sugar, tops; tomato; pepper, bell; squash; strawberry; eggplant; cucumber; carrot, roots; radish, roots; radish, top; turnip, roots; turnip, tops; onion; pea, dry; pea, succulent; melon; grape; walnut; orange; grapefruit; mulberry; peach; apple; apricot; blackberry; loganberry; pecan; cherry; plum, and cranberry.

21. Section 180.1092 is revised to read as follows:

**§ 180.1092 Menthol; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of the pesticidal chemical menthol in or on honey and honeycomb when used in accordance with good agricultural practice in over-wintering bee hives.

22. Section 180.1097 is revised to read as follows:

**§ 180.1097 GBM-ROPE; exemption from the requirement of a tolerance.**

The grape berry moth pheromone (GBM-ROPE) containing the active ingredients (Z)-9-dedecenyl acetate and (Z)-11-tetradecenyl acetate is exempt from the requirement of a tolerance in or on the raw agricultural commodity grape when used in orchards with encapsulated polyethylene tubing to control grape berry moth.

23. Section 180.1103 is revised to read as follows:

**§ 180.1103 Isomate-C; exemption from the requirement of a tolerance.**

The codling moth pheromone (Isomate-C) E,E-8,10-dodecenyl alcohol, dodecanol, tetradecanol is exempt from the requirements of a tolerance in or on all raw agricultural commodities when formulated in polyethylene pheromone dispensers for use in orchards with encapsulated polyethylene tubing to control codling moth.

24. Section 180.1113 is revised to read as follows:

**§ 180.1113 Langenidium giganteum; exemption from the requirement of a tolerance.**

*Lagenidium giganteum* (a fungal organism) is exempt from the requirement of a tolerance in or on the raw agricultural commodities aspirated grain fractions; grass, forage; grass, hay; rice, grain; rice, straw; soybean, seed; soybean, forage; soybean, hay; rice, wild, grain.

25. Section 180.1178 is revised to read as follows:

**§ 180.1178 Formic acid; exemption from the requirement of a tolerance.**

The pesticide formic acid is exempted from the requirement of a tolerance in or on honey and honeycomb when used to control tracheal mites and suppress varroa mites in bee colonies, and applied in accordance with label use directions.

26. Section 180.1196 is revised to read as follows:

**§ 180.1196 Peroxyacetic acid; exemption from the requirement of a tolerance.**

(a) An exemption from the requirement of a tolerance is established for residues of peroxyacetic acid in or on all food commodities, when such residues result from the use of peroxyacetic acid as an antimicrobial treatment in solutions containing a diluted end use concentration of peroxyacetic acid up to 100 ppm per application on fruits, vegetables, tree nuts, cereal grains, herbs, and spices.

(b) An exemption from the requirement of a tolerance is established for residues of peroxyacetic acid, in or on all food commodities when used in sanitizing solutions containing a diluted end-use concentration of peroxyacetic acid up to 500 ppm, and applied to tableware, utensils, dishes, pipelines, tanks, vats, fillers, evaporators, pasteurizers, aseptic equipment, milking equipment, and other food processing equipment in food handling establishments including, but not limited to dairies, dairy barns, restaurants, food service operations, breweries, wineries, and beverage and food processing plants.

27. In § 180.1206, by revising paragraphs (a) and (c) to read as follows:

**§ 180.1206 Aspergillus flavus AF36; exemption from the requirement of a tolerance.**

(a) An exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Aspergillus flavus* AF36 in or on cotton, gin byproducts; cotton, hulls; cotton, meal; cotton, refined oil; cotton, undelinted seed.

* * * * *

(c) *Aspergillus flavis* AF 36 is temporarily exempt from the requirement of a tolerance on corn, field, forage; corn, field, grain; corn, field, stover; corn, pop, grain; corn, pop, stover; corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; corn, sweet, stover when used in accordance with the Experimental Use Permit 71693–EUP–2. This temporary exemption from the tolerance will expire December 31, 2011.

28. Section 180.1219 is revised to read as follows:

**§ 180.1219 Foramsulfuron; exemption from the requirement of a tolerance.**

The pesticide foramsulfuron is exempted from the requirement of a tolerance in corn, field, grain/corn, field, forage/ corn, field, stover/corn, pop, grain/corn, pop, forage/corn, pop, stover; corn, sweet, forage; corn, sweet, kernel plus cob with husks removed; corn, sweet, stover when applied as a herbicide in accordance with good agricultural practices.

29. Section 180.1254 is revised to read as follows:

**§ 180.1254 Aspergillus flavus NRRL 21882 on peanut; exemption from requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of *Aspergillus flavus* NRRL 21882 in or on peanut; peanut hay; peanut, meal; peanut, refined oil.

30. Section 180.1258 is revised to read as follows:

**§ 180.1258 Acetic acid; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance is established for residues of the biochemical pesticide acetic acid when used as a preservative on post-harvest agricultural commodities intended for animal feed, including Alfalfa, seed; alfalfa, hay; barley, grain; bermudagrass, hay; bluegrass, hay; bromegrass, hay; clover, hay; corn, field, grain; corn, pop, grain; cowpea, hay; fescue, hay; lespedeza, hay; lupin; oat, grain; orchardgrass, hay; peanut, hay; timothy, hay; vetch, hay; and wheat, grain, or commodities described as grain or hay.

31. Section 180.1261 is revised to read as follows:

**§ 180.1261 Xanthomonas campestris pv. vesicatoria and Pseudomonas syringae pv. tomato specific Bacteriophages.**

An exemption from the requirement of a tolerance is established for residues of *Xanthomonas campestris pv. vesicatoria* and *Pseudomonas syringae pv. tomato* specific bacteriophages in or on pepper and tomato.

32. In § 180.1274, by revising the introductory text to read as follows:

**§ 180.1274 Tris (2-ethylhexyl) phosphate; exemption from the requirement of a tolerance.**

Tris (2-ethylhexyl) phosphate (TEHP, CAS Reg. No. 78–42–2) is exempt from the requirement of a tolerance for residues in grain, aspirated fractions; barley, grain, barley, hay, barley, straw; wheat, grain; wheat, forage; wheat, hay; wheat, straw when used under the following conditions:

* * * * *

33. Section 180.1276 is revised to read as follows:

**§ 180.1276 Tobacco mild green mosaic tobamovirus (TMGMV); temporary exemption from the requirement of a tolerance.**

A temporary exemption from the requirement of a tolerance is established for residues of tobacco mild green mosaic tobamovirus in or on all grass, forage and grass, hay.

34. Section 180.1279 is revised to read as follows:

**§ 180.1279 Zucchini yellow mosaic virus–weak strain; exemption from the requirement of a tolerance.**

An exemption from the requirement of a tolerance for residues of the ZYMVndash;WK strain in or on all raw cucurbit when applied/used in accordance with label directions.

[FR Doc. E9–5194 Filed 3–10–09; 8:45 am]

BILLING CODE 6560–50–S

# Notices

Federal Register
Vol. 74, No. 46
Wednesday, March 11, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Doc. No. AMS–LS–07–0131; LS–07–16]**

### United States Standards for Livestock and Meat Marketing Claims, Naturally Raised Claim for Livestock and the Meat and Meat Products Derived From Such Livestock

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB), for a new information collection for CFR Part 62—Quality Systems Verification Program (QSVP). AMS established a voluntary standard for a naturally raised marketing claim that livestock producers may request to have verified by the Department of Agriculture (USDA). This standard will become effective once this information collection is approved by OMB. AMS verification of this claim would be accomplished through an audit of the production process in accordance with procedures that are contained in Part 62 of Title 7 of the Code of Federal Regulations (7 CFR part 62). After approval, AMS will submit a request to merge this information collection into the currently approved OMB Number 0581–0124, 7 CFR Part 54 Meats, Prepared Meats and Meat Products (Grading, Certification & Standards) and 7 CFR Part 62 Quality Systems Verification Program (QSVP).

**DATES:** Comments on this notice must be received on or before May 11, 2009 to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this new information collection notice. Comments should be submitted through the Web site at *http://www.regulations.gov. Send written comments to:* New Information Collection for Naturally Raised Standard, Room 2607–S, AMS, USDA, 1400 Independence Avenue, SW., Washington, DC 20250–0254, or by facsimile to (202) 720–1112. All comments should reference the docket number AMS–LS–07–0131; LS–07–16. All comments received will be posted without change, including any personal information provided, on the Web site at *http://www.regulations.gov* and will be made available for public inspection at the above physical address during regular business hours.

**SUPPLEMENTARY INFORMATION:**

*Title:* United States Standards for Livestock and Meat Marketing Claims, Naturally Raised Claim for Livestock and the Meat and Meat Products Derived from such Livestock.

*OMB Number:* 0581–NEW.

*Expiration Date of Approval:* Three years from date of OMB Approval.

*Type of Request:* New information collection.

*Abstract:* Section 203(c) of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621–1627), directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.''

AMS established a voluntary standard for a naturally raised marketing claim that livestock producers may request to have verified by USDA (see 74 FR 3541). AMS verification of this claim would be accomplished through an audit of the production process in accordance with procedures that are contained in 7 CFR part 62.

The application for verification services requests the USDA employees to perform such services at the designated location. The information contained on the applications constitutes an agreement between USDA and the requesting entity.

QSVP are a collection of voluntary, audit-based, user-fee funded programs that allow applicants to have program documentation and program processes assessed by AMS auditor(s) and other USDA officials. QSVP are user-fees based on the approved hourly rate established under 7 CFR part 62. Applicants (individual or business with financial interest in the product) may request services through the submission of Form-313 ''Application for Service.'' In addition to the application for service, applicant would have to develop a technical proposal documenting their quality management system.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 11 hours per response including documentation needed to conform to audit requirements.

*Respondents:* Livestock and meat industry or other for-profit businesses.

*Estimated Number of Respondents:* 20 respondents.

*Estimated Number of Responses:* 44 responses.

*Estimated Number of Responses per Respondent:* 2 responses.

*Estimated Total Annual Burden on Respondents:* 483 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: March 5, 2009.

**Robert C. Keeney,**

*Acting Associate Administrator, Agricultural Marketing Service.*

[FR Doc. E9–5122 Filed 3–10–09; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Research Service

### Notice of Intent To Grant Exclusive License

**AGENCY:** Agricultural Research Service, USDA.

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Innovative Foods, Inc. of South San Francisco, California, an exclusive license to U.S. Patent Application Serial No. 10/917,797, ''Novel Infrared Dry Blanching (IDB), Infrared Blanching, and Infrared Drying Technologies for Food Processing'', filed on August 13, 2004.

**DATES:** Comments must be received April 10, 2009.

**ADDRESSES:** Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

**FOR FURTHER INFORMATION CONTACT:** June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

**SUPPLEMENTARY INFORMATION:** The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Innovative Foods, Inc. of South San Francisco, California has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

**Richard J. Brenner,**

*Assistant Administrator.*

[FR Doc. E9–5235 Filed 3–10–09; 8:45 am]

**BILLING CODE 3410–03–P**

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research, Education, and Extension Service

### Solicitation of Input From Stakeholders Regarding the Healthy Urban Food Enterprise Development Center Program

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Request for stakeholder input; correction.

**SUMMARY:** The Cooperative State Research, Education, and Extension Service published a document in the **Federal Register** on March 3, 2009, concerning request for stakeholder input regarding the Healthy Urban Food Enterprise Development Center Program. The document contained an incorrect e-mail address.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Tuckermanty, 202–205–0241.

**Correction**

In the **Federal Register** of March 3, 2009, in FR Doc E9–4384, on page 9212, in the second and third columns, correct the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions to read:

**ADDRESSES:** You may submit comments, identified by CSREES–2008–0005, by any of the following methods: Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

*E-mail: etuckermanty@csrees.usda.gov.* Include CSREES–2008–0005 in the subject line of the message.

*Fax:* (202) 401–1782.

*Mail:* Paper, disk or CD–ROM submissions should be submitted to: Liz Tuckermanty; Competitive Program (CP) Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Mail Stop 2201; 1400 Independence Avenue, SW.; Washington, DC 20250–2201.

*Hand Delivery/Courier:* Liz Tuckermanty; Competitive Programs (CP) Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 2340; Waterfront Centre; 800 9th Street, SW.; Washington, DC 20024.

*Instructions:* All submissions received must include the title ''The Center'' and CSREES–2008–0005. All comments received will be posted to *http://www.regulations.gov,* including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Dr. Liz Tuckermanty, (202) 205–0241 (phone), (202) 401–1782 (fax), or *etuckermanty@csrees.usda.gov.*

Dated: March 5, 2009.

**Colien Hefferan,**

*Administrator, Cooperative State Research, Education, and Extension Service.*

[FR Doc. E9–5118 Filed 3–10–09; 8:45 am]

**BILLING CODE 3410–22–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Big Grizzly Fuels Reduction and Forest Health Project, Eldorado National Forest, Placer County, CA

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement.

**SUMMARY:** The USDA, Forest Service, Eldorado National Forest will prepare an environmental impact statement (EIS) for a proposal to treat approximately 6,200 acres of National Forest System land for fuels reduction and forest health objectives. The project area is situated on the Georgetown Ranger District approximately 15 air-miles northeast of Georgetown, CA in the vicinity of Nevada Point Ridge, Devils Peak and Bear Springs. The intent of this project is to reduce potential fire hazard within the project area, to provide for increased resilience when a wildfire occurs within the project area, to provide for improved forest health, and to increase the rate of development of old forest characteristics. The Proposed Action consists of commercial and precommercial tree thinning with follow-up tractor piling or mastication; mastication of select, existing plantations with a follow-up treatment of herbicides to reduce brush competition and fuel buildup; the planting of conifers in expanded canopy gaps with a follow-up treatment of herbicide; and prescribed burning. Silvicultural treatments for each stand were chosen for their ability to meet the stated purpose and need. The focus of each treatment is based on the desired quality of each treatment area after management rather than the quantity or quality of the products removed from each area. In fact, some treatments would not remove forest products. Approximately 15 miles of native surface road reconstruction and 1 mile of new road construction are proposed in order to facilitate the treatment activities. The land allocations within the treatment areas, as identified in the Sierra Nevada Forest Plan Amendment Final Supplemental EIS (SNFPA FSEIS), are general forest, spotted owl home range core areas, old-forest, and riparian

conservation areas adjacent to perennial, seasonal, and ephemeral streams.

The purpose of the project is: (1) To change existing forest surface, ladder and crown fuel profiles in order to reduce potential wildfire intensity and behavior to mitigate the consequences of large, potentially damaging wildfires on selected forested areas; (2) to improve stand vigor and resistance to disease and insect mortality; (3) maintain and/or establish a composition of tree species and size classes that are closer to the historic levels for the area, and correspondingly sustainable into the future; and (4) to treat hazard fuels in a cost-effective manner to maximize program effectiveness.

**DATES:** Comments concerning the scope of the analysis must be received within 30 days of the publication of this Notice of Intent in the **Federal Register**. The draft environmental impact statement is expected in May 2009 and the final environmental impact statement is expected in October 2009.

**ADDRESSES:** Send written comments to Ramiro Villalvazo, Forest Supervisor, Eldorado National Forest, 7600 Wentworth Springs Rd., Georgetown, CA 95634 Attention: Big Grizzly Fuels Reduction and Forest Health Project.

**FOR FURTHER INFORMATION CONTACT:** Dana Walsh, Project Leader, Georgetown Ranger District, 7600 Wentworth Springs Rd, Georgetown, CA 95634, or by telephone at 530–333–4312.

**SUPPLEMENTARY INFORMATION:**

**Purpose and Need for Action**

(1) The primary purpose of the project is to change existing forest surface, ladder and crown fuel profiles in order to reduce potential wildfire intensity and behavior to mitigate the consequences of large, potentially damaging wildfires on selected forested areas.

There is a need to change potential fire behavior during weather conditions that produce wildfire behavior with extreme fire intensity and severity across a large portion of the landscape. The fuels conditions within the project area make the area prone to the risk of a stand-replacing catastrophic wildfire. The risk of losing key ecosystem components in this area is high. Treatments are needed that would be effective in terms reducing potential wildfire damage to intrinsic, forest related resources. Within the vicinity of the Big Grizzly project, lightning, dispersed recreation use, off-highway vehicle use, and traffic on the Eleven Pines and Nevada Point Ridge Roads are potential sources of wildfire ignition.

The effects of the Eldorado National Forest's Cleveland Fire (23,000 acres), Icehouse Fire (18,000 acres), Wrights Fire (8,000 acres), Star Fire (17,000 acres) Fred Fire (7,700 acres), Power Fire (16,800 acres), and numerous other large, wetland fires in California and across the western United States emphasize the desirability and the urgency of managing forest stands to reduce the likelihood of catastrophic wildfire. In the absence of fuel reductions it is likely that wildfire would determine the future landscape, threatening lives and property.

Forests in this area were historically subject to frequent low intensity fires that resulted in open, fire-resistant stands of trees. Multiple decades of fire exclusion, grazing by domestic livestock, previous stand replacing wildfire, mining, and historic logging practices, including selective logging of large pines and lack of follow-up slash treatment, have contributed to altered fire regimes, heavy fuel loadings, and changed vegetation composition and structure. As a result, the number, size, and intensity of wildfires have been altered from their historical range.

By itself prescribed fire would be difficult to apply in the majority of the project area due to the fuel accumulation, changes in stand structure, and operation limitations in its use. Mechanical treatments can be effective tools to modify stand structure and influence subsequent fire severity and extent. In many stands mechanical thinning followed by prescribed fire is necessary to achieve forest resilience much faster than with prescribed fire alone.

Fire behavior is strongly influenced by stand structure as it relates to live and dead fuel loading and ladder fuels. Reducing crown density and both ladder fuels and surface fuels is essential to effectively change fire behavior. Reducing surface fuels and ladder fuels reduces the likelihood of crown scorch and crown ignition. The theoretical basis for changing fuel structure to reduce fire hazard is well established.

The theoretical benefits of fuel manipulation are supported by real world reviews of wildfires and their interaction with fuel treatment areas. Fuel treatments similar to those proposed on this project have also been demonstrated to be effective in recent research conducted on post-fire vegetation on the Angora and Cone Fires completed by the U.S. Forest Service. Results from a recent study on the effectiveness of pre-fire fuel treatments for several wildfires that burned in 2003 and 2004, including the Power Fire on the Eldorado National Forest further validate the use of a combination of canopy thinning and surface fuel treatments. Studies have demonstrated that the treatment of surface fuels alone is generally effective in altering fire severity; however, treatments that included canopy thinning followed by surface fuel treatment were found to be the most effective at reducing canopy scorch and tree mortality. Additionally, the effectiveness of treatments that reduced both canopy and surface fuels were found to increase with weather severity, *i.e.,* the more extreme the fire conditions, the more valuable fuels treatments proved to be.

Reviews have pointed out that thinning treatments that are followed by reduction of surface fuels can significantly limit fire spread under wildfire conditions. Current research demonstrates the potential of fuel treatments to reduce large fire growth. Fuel treatments are most effective when the spatial arrangement of the treatment units is considered and planned for. The Big Grizzly project has been developed on the basis of anticipated treatment effectiveness and spatial arrangement of proposed treatment areas. Treatments within Strategically Placed Landscape Treatment Areas (SPLATs) can increase the effectiveness of fire suppression efforts, and substantially decrease the risk to life and property. This project would directly reduce the threat of catastrophic wildfire to multiple resources within and adjacent to the project area. In addition to implementing a spatial design for the project that might be optimal for reducing fire spread, the Big Grizzly Project has also been developed based on the historical ecological processes and landscape patterns within the project area.

Treatments are not intended to specifically facilitate fire suppression efforts. The focus of fuels treatments is to improve the ability of treated stands to withstand the adverse effects of future fires. However, safe and effective initial attack by hand crews and engine modules, the initial attack forces of the Georgetown Ranger District, is imperative due to current wildfire policy for the project area and air quality restrictions within the state which require continued fire suppression.

Selected plantations currently exhibit a buildup of woody brush species such as green leaf manzanita, deerbrush, whitethorn, and bitter cherry. The existing conditions of the plantations include an average brush component 4–10 feet in height with brush cover levels of 30 to 100%. Currently, flame lengths

from a wildland fire burning under the 90th percentile weather conditions could easily make the transition from surface fire into the crowns of the trees, causing high mortality within plantations and continued fire spread into the surrounding forest stands.

The National Fire Plan and the Cohesive Strategy, developed after the severe wildfire season in 2000, provides direction to the Forest Service to reduce the amount of fuel in fire-prone forests to protect people and sustain resources. Additionally, the Record of Decision (ROD) for the Sierra Nevada Forest Plan Amendment (SNFPA) sets priorities for management activities that would restore natural ecosystem processes while minimizing the threat fire poses to lives, structures, and resources through site specific prescriptions designed to modify fire intensity and spread in treated areas.

(2) The second fundamental purpose of this project is to also improve stand vigor and resistance to disease and insect mortality.

There is a need to improve the health of trees within the project area by removing unhealthy trees and reducing stand density. Over-dense stands are experiencing inter-tree competition for resources and are at risk for high levels of mortality in the near future. Some stands within the project area are already experiencing high levels of mortality due to disease and insect activity. Although some of the stands in the project have been thinned and salvage logged in the past, the predominantly white fir stands are expected to continue to decrease in health and vigor over time due to insects, annosus root rot, and other disease pathogens. These stands will continue moving farther from their desired future condition as high levels of mortality decrease canopy cover, stocking, and growth at a stand level.

The project area is currently at risk due to insect and disease related mortality. Increased densities of trees, higher levels of disease and insect attack, and an accumulation of ground and ladder fuels within stands indicate unhealthy conditions. Denser stands, such as those that have developed in the project area, demand more water and other limited resources. As a result, over-dense stands are less resistant to insect and disease-related attack, especially during periods of extended drought, which then increases the potential for extreme fire behavior in the area. Large areas of the landscape are dominated by shade-tolerant, drought- and/or fire-intolerant species (white fir, incense-cedar, and Douglas-fir). The structure of the current forested landscape represents an unstable, unsustainable, and therefore undesirable departure from the historic landscape for this area.

The SNFPA directs that prescriptions for treatment areas address identified needs to increase stand resistance to mortality from insect and disease by thinning densely stocked stands to reduce competition and improve tree vigor. Forest health specialists have reviewed treatment areas and have confirmed that insect and disease pathogen activities within stands have increased the risk of mortality due to high stand density and current species composition.

(3) A purpose of this project is also to maintain and/or establish a composition of tree species and size classes that are closer to the historic conditions for the area and correspondingly sustainable into the future.

There is a need to apply the necessary silvicultural and fuels reduction treatments to accelerate the development of key habitat and old forest characteristics, increase stand heterogeneity, restore pine, and to promote hardwoods. The project area is characteristic of much of the mixed-conifer zone of the Sierra Nevada with few or no stands remaining that can be described as natural. To various degrees the forest has been changed from one dominated by large, old, widely spaced trees to one with dense, fairly even-aged stands with most of the larger trees between 80 and 100 years old. This is an unstable, unsustainable forest that is susceptible to drought-induced mortality, bark beetle infestation, and severe wildfire.

Many of the stands within the Big Grizzly project area have been type converted from pine to white fir through natural mortality and the selective logging of pine. Rather than attempt to restore the stands to a specific point in history, there is a need to restore a forest structure that is more resilient to drought, insect and disease pathogens, and wildfire. As discussed above, as a result of the current species composition and risk from fire, insect and disease pathogens, these stands are not sustainable. Proposed treatments would promote shade intolerant pines and hardwoods while decreasing the amount of shade tolerant white fir and incense cedar, thereby moving stands closer to a more sustainable species composition.

Reduced competition would enable trees to grow larger more quickly, thereby providing greater numbers of large trees and snags for the future. Treatment would also reduce the risk of fire related mortality to large trees that are currently within the units, maintaining the valuable structure they provide within the stand.

There is a need to control spacing and species composition in the plantations to accelerate the development of old forest characteristics. While the plantations do not currently have the structure that would allow them to function as old forest habitat, since they consist primarily of young ponderosa pine, they provide important reservoirs of pine within the landscape. Thinning in plantations and natural stands would facilitate tree growth allowing stands to more rapidly develop large trees, and increase the probability that these stands would survive into the future. These stands could then be managed to ensure the development of additional components of structure for old forest dependent species.

(4) A purpose of the project is to treat hazard fuels in a cost-effective manner to maximize program effectiveness.

There is a need for this project to be cost effective so that the maximum benefit can be achieved through the work performed. The SNFPA provides direction to design area treatments that are economically efficient where consistent with desired conditions, using wood by-products from over-dense stands to offset the cost of fuels treatments. The removal of commercial sized trees would partially offset the substantial costs associated with the expensive investment components of this project, including the treatment of surface fuels, cutting and removal of the non-commercial ladder fuels, mastication and herbicide treatments.

**Proposed Action**

To move stands toward the Desired Future Condition for the various land allocations as described in the Record of Decision for the Final Supplemental Environmental Impact Statement for the Sierra Nevada Forest Plan Amendment dated 1/21/2004, the Proposed Action includes a combination of fuels reduction and forest health improvement actions. Silvicultural treatments for each stand were chosen for their ability to meet the stated purpose and need. The focus of each treatment is based on the desired quality of each treatment area after management rather than the quantity or quality of the products removed from each area. In fact, some treatment would not remove forest products.

- Approximately 3,200 acres are proposed to be treated using understory thinning involving the cutting and removal of both commercial and non-commercial size trees. Follow-up mastication or tractor piling and pile

burning would occur shortly after the thinning is completed. Follow up prescribed burning would occur approximately 2–7 years after the pile burning is completed.

• Approximately 900 additional acres are proposed for stand improvement cutting for forest health through the removal of suppressed and dying trees. In order to facilitate the restoration of pine species to stands, the creation of gaps of up to 3 acres in size is proposed within these 900 acres of stand treatments. Gap establishment would be accomplished through the harvesting of white fir trees and conifer trees of other species that are within; and immediately adjacent to selected, existing canopy gaps that are currently greater than 1/2 acre in size and that are expanding due to root rot. Healthy pine trees would be specifically retained within the selected gaps. The selected gaps would have the slash tractor piled and then the gaps would be planted with ponderosa pine, sugar pine and Douglas-fir at a 12x12 foot spacing. At the time of planting, the planted seedlings would be released from competing vegetation by hand scalping. A follow-up ground based application of herbicide would occur within the gaps within 1–5 years to control competing vegetation. Gaps would be established on 10–30% of the acres in any given stand. Planting of pine within these gaps would move the stands toward their desired future, thereby moving the stand structure and composition to a more resilient condition.

• Units 3 18–1, 320–43, 320–67, and 320–7 1, approximately 900 acres, would require a non-significant forest plan amendment because the proposed activities would reduce the canopy cover below 40 percent. The amendment is necessary to meet forest health objectives of minimizing the impact of Heterobasidion annosum, the most important disease found in the project area.

• The proposal also includes precommercial thinning and mastication of approximately 120 acres of <50-year old plantations, mastication with follow-up ground based application of herbicide on approximately 1,100 acres of 15–30 year old plantations, and mastication with follow-up ground based application of herbicide on approximately 75 acres of 47 year old plantation currently located within the project area. These treatments would reduce future fuel loading, alter the vegetative structure to reduce the risk of loss to wildland fire, improve forest health by reducing susceptibility to insect and disease pathogens, and create conditions that accelerate the development of old forest characteristics.

• Prescribed burning as the only treatment is proposed on approximately 800 acres of the project area to reduce the amount of ground fuels between thinning units thereby making the proposed thinning treatments more effective.

• Approximately 1 mile of road construction and approximately 15 miles of road reconstruction is estimated to be necessary to facilitate accessibility to perform proposed fuel and forest health treatments.

**Nature of Decision To Be Made**

The decision to be made is whether to adopt and implement the proposed action, an alternative to the proposed action, or take no action to improve forest health, and to reduce fuels.

Other alternatives would be developed if significant issues are identified during the scoping process for the environmental impact statement. All alternatives will need to respond to the specific condition of providing benefits equal to or better than the current condition.

**Scoping Process**

Public participation will be especially important at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations that may be interested in or affected by the proposed action. To facilitate public participation, information about the proposed action will be mailed to all who express interest in the Proposed Action.

Comments submitted during the scoping process should be in writing and should be specific to the Proposed Action. The comments should describe as clearly and completely as possible any issues the commenter has with the proposal.

**Comment Requested**

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

*Early Notice of Importance of Public Participation in Subsequent Environmental Review:* A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NIRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage, but that axe not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.)

Ramiro Villalvazo, Forest Supervisor, Eldorado National Forest is the responsible official. As the responsible official he will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations (36 CFR part 215).

Dated: January 27, 2009.

**Ramiro Villalvazo,**

*Forest Supervisor.*

[FR Doc. E9–5019 Filed 3–10–09; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Notice of Solicitation of Applications (NOSA) for Inviting Applications for Energy Audits and Renewable Energy Development Assistance Under the Rural Energy for America Program

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice announces the request for grant applications from units of State, tribal or local government, land-grant colleges, universities, or other institutions of higher education (including 1994 Land Grant (Tribal Colleges) and 1890 Land Grant Colleges and Historically Black Universities), rural electric cooperatives, and public power entities to provide energy audits and renewable energy development assistance for agricultural producers and rural small businesses. The Agency intends to publish a proposed rule for future submissions that will amend the Rural Energy for America portion of the Rural Development Grants regulation, published October 15, 2008 [73 FR 61198], at 7 CFR part 5002, for energy audits and renewable energy development assistance projects in calendar year 2009.

**DATES:** Applications for grants must be submitted on paper or electronically no later than 4:30 p.m., local time on June 9, 2009. Neither complete nor incomplete applications received after this date and time will be considered, regardless of the postmark on the application.

The comment period for information collection under the Paperwork Reduction Act of 1995 continues through May 11, 2009. Comments on the paper work burden must be received by this date to be assured of consideration.

**ADDRESSES:** Application materials may be obtained by contacting one of Rural Development's Rural Energy Coordinators or by downloading through *http://www.grants.gov*.

Submit electronic applications at *http://www.grants.gov*, following the instructions found on this Web site. To use Grants.gov, all applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform*. Submit completed paper applications to the Rural Development State Office in the State in which the applicant's principal office is located.

**Rural Development Rural Energy Coordinators**

**Note:** Telephone numbers listed are not toll-free.

*Alabama*

Quinton Harris, USDA Rural Development, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3623, *Quinton.Harris@al.usda.gov*.

*Alaska*

Dean Stewart, USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7722, *dean.stewart@ak.usda.gov.*

*American Samoa (See Hawaii)*

*Arizona*

Alan Watt, USDA Rural Development, 230 North First Avenue, Suite 206, Phoenix, AZ 85003–1706, (602) 280–8769, *Alan.Watt@az.usda.gov*.

*Arkansas*

Tim Smith, USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3280, *Tim.Smith@ar.usda.gov.*

*California*

Philip Brown, USDA Rural Development, 430 G Street, #4169, Davis, CA 95616, (530) 792–5811, *Philip.brown@ca.usda.gov.*

*Colorado*

April Dahlager, USDA Rural Development, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (720) 544–2909, *april.dahlager@co.usda.gov.*

*Commonwealth of the Northern Mariana Islands—CNMI (See Hawaii)*

*Connecticut (See Massachusetts)*

*Delaware/Maryland*

Bruce Weaver, USDA Rural Development, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857–3626, *Bruce.Weaver@de.usda.gov.*

*Federated States of Micronesia (See Hawaii)*

*Florida/Virgin Islands*

Joe Mueller, USDA Rural Development, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338–3482, *joe.mueller@fl.usda.gov.*

*Georgia*

J. Craig Scroggs, USDA Rural Development, 111 E. Spring St., Suite B, Monroe, GA 30655, Phone 770–267–1413 ext. 113, *craig.scroggs@ga.usda.gov.*

*Guam (See Hawaii)*

*Hawaii/Guam/Republic of Palau/Federated States of Micronesia/Republic of the Marshall Islands/America Samoa/Commonwealth of the Northern Marianas Islands-CNMI*

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8313, *Tim.Oconnell@hi.usda.gov.*

*Idaho*

Brian Buch, USDA Rural Development, 9173 W. Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5623, *Brian.Buch@id.usda.gov.*

*Illinois*

Molly Hammond, USDA Rural Development, 2118 West Park Court, Suite A, Champaign, IL 61821, (217) 403–6210, *Molly.Hammond@il.usda.gov.*

*Indiana*

Jerry Hay, USDA Rural Development, 2411 N. 1250 W., Deputy, IN 47230, (812) 873–1100, *Jerry.Hay@in.usda.gov*.

*Iowa*

Teresa Bomhoff, USDA Rural Development, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4447, *teresa.bomhoff@ia.usda.gov.*

*Kansas*

David Kramer, USDA Rural Development, 1303 SW First American Place, Suite 100, Topeka, KS 66604–4040, (785) 271–2744, *david.kramer@ks.usda.gov.*

*Kentucky*

Scott Maas, USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7435, *scott.maas@ky.usda.gov.*

*Louisiana*

Kevin Boone, USDA Rural Development, 905 Jefferson Street, Suite 320, Lafayette, LA 70501, (337) 262–6601, Ext. 133, *Kevin.Boone@la.usda.gov.*

*Maine*

John F. Sheehan, USDA Rural Development, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405, (207) 990–9168, *john.sheehan@me.usda.gov.*

*Maryland (See Delaware)*

*Massachusetts/Rhode Island/Connecticut*

Charles W. Dubuc, USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002, (401) 826–0842 X 306, *Charles.Dubuc@ma.usda.gov.*

*Michigan*

Traci J. Smith, USDA Rural Development, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5157, *Traci.Smith@mi.usda.gov*.

*Minnesota*

Lisa L. Noty, USDA Rural Development, 1400 West Main Street, Albert Lea, MN 56007, (507) 373–7960 Ext. 120, *lisa.noty@mn.usda.gov.*

*Mississippi*

G. Gary Jones, USDA Rural Development, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–5457, *george.jones@ms.usda.gov.*

*Missouri*

Matt Moore, USDA Rural Development, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9321, *matt.moore@mo.usda.gov.*

*Montana*

John Guthmiller, USDA Rural Development, 900 Technology Blvd., Unit 1, Suite B, P.O. Box 850, Bozeman, MT 59771, (406) 585–2540, *John.Guthmiller@mt.usda.gov.*

*Nebraska*

Debra Yocum, USDA Rural Development, 100 Centennial Mall North, Room 152, Federal Building, Lincoln, NE 68508, (402) 437–5554, *Debra.Yocum@ne.usda.gov.*

*Nevada*

Herb Shedd, USDA Rural Development, 1390 South Curry Street, Carson City, NV 89703, (775) 887–1222, *herb.shedd@nv.usda.gov.*

*New Hampshire (See Vermont)*

*New Jersey*

Victoria Fekete, USDA Rural Development, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054, (856) 787–7752, *Victoria.Fekete@nj.usda.gov.*

*New Mexico*

Jesse Bopp, USDA Rural Development, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4952, *Jesse.bopp@nm.usda.gov.*

*New York*

Thomas Hauryski, USDA Rural Development, 415 West Morris Street, Bath, NY 14810, (607) 776–7398 Ext. 132, *Thomas.Hauryski@ny.usda.gov.*

*North Carolina*

David Thigpen, USDA Rural Development, 4405 Bland Rd. Suite 260, Raleigh, N.C. 27609, 919–873–2065, *David.Thigpen@nc.usda.gov.*

*North Dakota*

Dennis Rodin, USDA Rural Development, Federal Building, Room 208, 220 East Rosser Avenue, P.O. Box 1737, Bismarck, ND 58502–1737, (701) 530–2068, *Dennis.Rodin@nd.usda.gov.*

*Ohio*

Randy Monhemius, USDA Rural Development, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418, (614) 255–2424, *Randy.Monhemius@oh.usda.gov.*

*Oklahoma*

Jody Harris, USDA Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1036, *Jody.harris@ok.usda.gov.*

*Oregon*

Don Hollis, USDA Rural Development, 1229 SE Third Street, Suite A, Pendleton, OR 97801–4198, (541) 278–8049, Ext. 129, *Don.Hollis@or.usda.gov.*

*Pennsylvania*

Bernard Linn, USDA Rural Development, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2182, *Bernard.Linn@pa.usda.gov.*

*Puerto Rico*

Luis Garcia, USDA Rural Development, IBM Building, 654 Munoz Rivera Avenue, Suite 601, Hato Rey, PR 00918–6106, (787) 766–5091, Ext. 251, *Luis.Garcia@pr.usda.gov.*

*Republic of Palau (See Hawaii)*

*Republic of the Marshall Islands (See Hawaii)*

*Rhode Island (See Massachusetts)*

*South Carolina*

Shannon Legree, USDA Rural Development, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5881, *Shannon.Legree@sc.usda.gov.*

*South Dakota*

Douglas Roehl, USDA Rural Development, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1145, *doug.roehl@sd.usda.gov.*

*Tennessee*

Will Dodson, USDA Rural Development, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1350, *will.dodson@tn.usda.gov.*

*Texas*

Daniel Torres, USDA Rural Development, Federal Building, Suite 102, 101 South Main Street, Temple, TX 76501, (254) 742–9756, *Daniel.Torres@tx.usda.gov.*

*Utah*

Roger Koon, USDA Rural Development, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138, (801) 524–4301, *Roger.Koon@ut.usda.gov.*

*Vermont/New Hampshire*

Cheryl Ducharme, USDA Rural Development, 89 Main Street, 3rd Floor, Montpelier, VT 05602, 802–828–6083, *cheryl.ducharme@vt.usda.gov.*

*Virginia*

Laurette Tucker, USDA Rural Development, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1594, *Laurette.Tucker@va.usda.gov.*

*Virgin Islands (See Florida)*

*Washington*

Mary Traxler, USDA Rural Development, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512, (360) 704–7762, *Mary.Traxler@wa.usda.gov.*

*West Virginia*

Richard E. Satterfield, USDA Rural Development, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4874, *Richard.Satterfield@wv.usda.gov.*

*Wisconsin*

Brenda Heinen, USDA Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615, Ext. 139, *Brenda.Heinen@wi.usda.gov.*

*Wyoming*

Jon Crabtree, USDA Rural Development, Dick Cheney Federal Building, 100 East B Street, Room 1005, P.O. Box 11005, Casper, WY 82602, (307) 233–6719, *Jon.Crabtree@wy.usda.gov.*

**FOR FURTHER INFORMATION CONTACT:** For information about this Notice, please contact the Energy Branch, USDA Rural Development, STOP 3225, Room 6870, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 720–1400.

For assistance on energy audit and renewable energy development assistance grants, please contact the applicable Rural Development's Rural Energy Coordinator, as provided in the Addresses section of this Notice.

**SUPPLEMENTARY INFORMATION:**

## Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, USDA Rural Development will seek OMB approval of the reporting and recordkeeping requirements contained in this Notice and hereby opens a 60-day public comment period.

*Title:* Energy Audit and Renewable Energy Development Assistance under the Rural Energy for America Program.

*Type of Request:* New collection.

*Abstract:* The Agency is providing grants to eligible applicants for the provision of energy audits and renewable energy development assistance to agricultural producers and rural small businesses.

The collection of information is vital to the Agency to make wise decisions regarding the eligibility of applicants and their projects in order to ensure compliance with agency provisions and is necessary in order to implement these provisions for energy audits and renewable energy development assistance.

The following estimates are based on the average over the first three years these activities are funded.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 1.4 hours per response.

*Respondents:* Agricultural producers and rural small businesses.

*Estimated Number of Respondents:* 53

*Estimated Number of Responses per Respondent:* 15

*Estimated Number of Responses:* 865

*Estimated Total Annual Burden (hours) on Respondents:* 1104

Copies of this information collection may be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

**Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Development, including whether the information will have practical utility; (b) the accuracy of Rural Development's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this Notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Overview Information**

*Federal Agency Name.* Rural Business-Cooperative Service.

*Funding Opportunity Title.* Energy Audit and Renewable Energy Development Assistance under the Rural Energy for America Program.

*Announcement Type.* Initial announcement.

*Catalog of Federal Domestic Assistance (CFDA) Number.* These activities under the Rural Energy for America Program are listed in the Catalog of Federal Domestic Assistance under Number 10.868.

*Dates.* Applications must be completed and received in the appropriate United States Department of Agriculture (USDA) Rural Development State Office no later than 4:30 p.m. local time June 9, 2009. Applications received after 4:30 p.m. local time June 9, 2009, regardless of the application's postmark, will be returned to the applicant with no action.

*Availability of Notice.* This Notice is available on the USDA Rural Development Web site at *http://www.rurdev.usda.gov/rbs/farmbill/index.html.*

**I. Funding Opportunity Description**

A. *Purpose.* This Notice is issued pursuant to section 9001 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill), which amends section 9006 of the Farm Security and Rural Investment Act of 2002 (FSRIA), which establishes the Rural Energy for America Program under section 9006 of FSRIA. The 2008 Farm Bill requires the Secretary of Agriculture to create a program to make grants to units of State, tribal or local government, land-grant colleges, universities, or other institutions of higher education (including 1994 Land Grant (Tribal Colleges) and 1890 Land Grant Colleges and Historically Black Universities), rural electric cooperatives or public power entities to assist agricultural producers and rural small businesses by conducting energy audits and providing recommendations and information on renewable energy development assistance and improving energy efficiency. These projects (energy audits and renewable energy development assistance) are designed to help agricultural producers and rural small businesses reduce energy costs and consumption and help meet the nation's critical energy needs. The 2008 Farm Bill mandates that the recipient of a grant that conducts an energy audit for an agricultural producer or a rural small business require the agricultural producer or rural small business to pay at least 25 percent of the cost of the energy audit, which shall be retained by the eligible entity for the cost of the audit.

B. *Statutory Authority.* These activities (energy audits and renewable energy development assistance) are found in the Rural Energy for America Program, which is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234).

C. *Definition of Terms.* The following definitions are applicable to this Notice.

*Administrator.* The Administrator of Rural Business-Cooperative Service within the Rural Development Mission Area of the U.S. Department of Agriculture.

*Agricultural producer.* An individual or entity directly engaged in the production of agricultural products, including crops (including farming); livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations.

*Departmental regulations.* The regulations of the Department of Agriculture's Office of Chief Financial Officer (or successor office) as codified in 7 CFR parts 3000 through 3099, including but not necessarily limited to 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts.

*Energy audit.* An audit conducted by a certified energy manager or professional engineer that focuses on potential capital-intensive projects and involves detailed gathering of field data and engineering analysis. The audit will provide detailed project costs and savings information with a high level of confidence sufficient for major capital investment decisions similar to, but in more detail, than an energy assessment.

*Energy efficiency hydropower projects.* Projects that improve the efficiency of an existing hydropower system, such as replacement equipment.

*Hydropower.* Energy created by use of various types of moving water including, but not limited to, ocean movement (tidal, wave, current, or thermal changes); diverted run-of-river water; in-stream run-of-river water; in-conduit water; or geothermally heated surface water.

*Institution of higher education.* As defined in 20 U.S.C. 1002(a).

*Post-application.* The period of time after the Agency has received a complete application. A complete application is an application that contains all parts necessary for the Agency to determine applicant and project eligibility, to score the application, and to conduct the technical evaluation.

*Public power entity.* Is defined using the definition of state utility as defined in section 217(A)(4) of the Federal Power Act (16 U.S.C. 824q(a)(4)). As of this writing, the definition is a State or any political subdivision of a State, or any agency, authority, or instrumentality of any one or more of the foregoing, or a corporation that is wholly owned, directly or indirectly, by any one or more of the foregoing, competent to carry on the business of developing, transmitting, utilizing, or distributing power.

*Qualified consultant.* An independent, third-party possessing the knowledge, expertise, and experience to perform in an efficient, effective, and authoritative manner the specific task required.

*Rated power.* The amount of energy that can be created at any given time.

*Renewable biomass.*

(i) Materials, pre-commercial thinnings, or invasive species from National Forest System land and public lands (as defined in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that:

(A) Are byproducts of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(B) would not otherwise be used for higher-value products; and

(C) are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (e)(2), (e)(3), and (e)(4) and large-tree retention of paragraph (f) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512); or

(ii) any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including:

(A) Renewable plant material, including feed grains; other agricultural commodities; other plants and trees; and algae; and

(B) waste material, including crop residue; other vegetative waste material (including wood waste and wood residues); animal waste and byproducts (including fats, oils, greases, and manure); and food waste and yard waste.

*Renewable energy.* Energy derived from:

(i) A wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric source; or

(ii) hydrogen derived from renewable biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric energy sources.

*Renewable Energy Development Assistance.* Assistance provided by eligible grantees to assist agricultural producers and rural small businesses to become more energy efficient and to use renewable energy technologies and resources. This includes provision of client specific reports detailing the current/projected energy usage/needs for the site and the amount and quality of renewable energy resource(s) available for the subject site facility. (Information regarding residential dwellings at any site will not be included in such reports.) It also includes client debriefing regarding the report and provision of information regarding the use of appropriate renewable technologies at subject sites.

*Renewable energy hydropower project.* A new energy generation project that uses moving water as the feedstock equivalent.

*Rural or rural area.* Any area of a State not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States, and the contiguous and adjacent urbanized area. For the purposes of this definition, cities and towns are incorporated population centers with definite boundaries, local self-government, and legal powers set forth in a charter granted by the State. For Puerto Rico, Census Designated Place (CDP), as defined by the U.S. Census Bureau, will be used as the equivalent to city or town. For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural area based on available population data.

*Small business.* An entity considered a small business in accordance with the U.S. Small Business Administration's (SBA) small business size standards found in Title 13 CFR part 121. A private entity, including a sole proprietorship, partnership, corporation, cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code), and an electric utility, including a Tribal or governmental electric utility, that provides service to rural consumers on a cost-of-service basis without support from public funds or subsidy from the Government authority establishing the district, provided such utilities meet SBA's definition of small business. These entities must operate independently of direct Government control. With the exception of the entities described above, all other non-profit entities are excluded.

*Small hydropower.* A hydropower project for which the rated power of the system is 30 megawatts or less.

## II. Funding Information

A. *Available Funds.* The amount of funds available for energy audits and renewable energy development assistance in FY 2009 will be up to 4 percent of the funds made available to the Rural Energy for America Program.

B. *Number of Grants.* The number of grants will depend on the number of eligible applicants participating in conducting energy audits and providing renewable energy development assistance.

C. *Range of Amounts of Each Grant.* To ensure applications for energy audits and renewable energy development assistance will allow the maximum number of States to benefit from these projects under the Rural Energy for America Program, grants awarded to a single applicant will be limited to no more than $100,000 under this Notice.

D. *Type of Instrument.* Grant.

## III. Eligibility Information

Eligibility requirements for energy audit and renewable energy development assistance grants under the Rural Energy for America Program are:

A. *Applicant eligibility.* To be eligible for an energy audit grant or a renewable energy development assistance grant under the Rural Energy for America Program, the applicant must meet each of the criteria, as applicable, set forth in paragraphs (1) through (4) in this section. The Agency will determine an applicant's eligibility.

(1) *Type of applicant.* The applicant must be one of the following:

(i) A unit of State, tribal or local government;

(ii) a land-grant college, a university, or an other institution of higher education;

(iii) a rural electric cooperative; or

(iv) a public power entity.

(2) *Citizenship.* To be eligible, applicants, owned by private persons, must be at least 51 percent owned by persons who are either:

(i) Citizens of the United States (U.S.), the Republic of Palau, the Federated States of Micronesia, the Republic of the Marshall Islands, or American Samoa; or

(ii) legally admitted permanent residents residing in the U.S.

(3) *Capacity to perform.* The applicant must have sufficient capacity to perform the activities proposed in the application to ensure success. The Agency will make this assessment based on the information provided in the application.

(4) *Legal authority and responsibility.* Each applicant must have, or obtain, the legal authority necessary to carry out the purpose of the grant.

(5) *Ineligible applicants.* Consistent with Department regulations, an applicant is ineligible if it is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs. Applicants will also be considered ineligible for a grant if they have an outstanding Federal judgment (other than one obtained in the U.S. Tax Court), are delinquent on the payment of Federal income taxes, or are delinquent on Federal debt.

B. *Project Eligibility.*

To be eligible for an energy audit or a renewable energy development assistance grant, the grant funds for a project must be used by the grant recipient to assist agricultural producers

or rural small businesses in one or both of the purposes specified in paragraphs (1) and (2) below and shall also comply with paragraph (3) and, if applicable, paragraph (4).

(1) Conducting and promoting energy audits that meet the requirements of the energy audit as defined in this Notice and that cover all of the following:

(i) *Provision of situation reports.* Include a narrative description of the facility or process being audited; its energy system(s) and usage; and activity profile. Also include the price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer over the previous 12 months from the date of the audit. Any energy conversion data should be based on use and source.

(ii) *Potential improvements.* List specific information regarding all potential energy-saving opportunities and the associated cost.

(iii) *Technical analysis.* Discuss the possible interactions of the potential improvements with existing energy systems.

(A) Estimate the annual energy and energy costs savings expected from each possible improvement recommended for the potential project.

(B) Estimate all direct and attendant indirect costs of each improvement.

(C) Rank potential improvement measures by cost-effectiveness.

(iv) *Potential improvement description.* Provide a narrative summary of the potential improvement and its ability to provide needed benefits, including a discussion of nonenergy benefits such as project reliability and durability.

(A) Provide preliminary specifications for critical components.

(B) Provide preliminary drawings of project layout, including any related structural changes.

(C) Document baseline data compared to projected consumption, together with any explanatory notes. When appropriate, show before-and-after data in terms of consumption per unit of production, time or area. Include at least 1 year's bills for those energy sources/fuel types affected by this project. Also submit utility rate schedules, if appropriate.

(D) Identify significant changes in future related operations and maintenance costs, including person-hours.

(E) Describe explicitly how outcomes will be measured annually.

(2) Conducting and promoting renewable energy development assistance by providing to agricultural producers and rural small businesses recommendations and information on how to improve the energy efficiency of their operations and to use renewable energy technologies and resources in their operations.

(3) Because the grants addressed in this Notice are under the Rural Energy for America Program, energy audit assistance and renewable energy development assistance can be provided only to facilities located in rural areas.

(4) For the purposes of this Notice, only hydropower projects with a rated power of 30 megawatts or less are eligible for energy audits and renewable energy development assistance. The Agency refers to these hydropower sources as ''small hydropower,'' which includes hydropower projects commonly referred to as ''micro-hydropower'' and ''mini-hydropower.''

## IV. Application and Submission Information

### *A. Address To Request Application*

Applicants may obtain applications from Rural Development Rural Energy Coordinators, as provided in the Addresses section of this Notice. Applicants planning to apply electronically must visit *http://www.grants.gov* and follow the instructions.

### *B. Content and Form of Submission*

Applicants must submit an original and one copy of the application to the Rural Development State Office in which the applicant's principal office is located. Applicants must submit complete applications, consisting of the following elements, in order to be considered.

(1) Form SF 424, Application for Federal Assistance;

(2) Form SF–424A, Budget Information—Non-Construction Programs;

(3) Form SF–424B, Assurances—Non-Construction Programs;

(4) If an entity, copies of applicant's organizational documents showing the applicant's legal existence and authority to perform the activities under the grant;

(5) A proposed scope of work, including a description of the proposed project, details of the proposed activities to be accomplished and timeframes for completion of each task, the number of months duration of the project, and the estimated time it will take from grant approval to beginning of project implementation. A written narrative to be used as the scope of work which includes, at a minimum, the following items:

(i) An Executive Summary;

(ii) The plan and schedule for implementation;

(iii) The anticipated number of agricultural producers and/or rural small businesses to be served;

(iv) An itemized budget—compute total cost per rural small business or agricultural producer served—matching funds should be clearly identified as cash;

(v) The geographic scope of the proposed project;

(vi) Applicant experience as follows:

(A) If applying for a Renewable Energy Development Assistance grant, the applicant's experience in completing similar renewable energy development assistance activities, including the number of similar projects the applicant has performed and the number of years the applicant has been performing a similar service.

(B) If applying for an Energy Audit grant, the number of energy audits and assessments the applicant has completed and the number of years the applicant has been performing those services;

(C) For all applicants, the amount of experience in administering these or similar activities using State or Federal support.

(vii) Applicant's resources, including personnel, finances, and technology, to complete what is proposed. If submitting in multiple states, resources must be sufficient to complete all projects;

(viii) Leveraging and commitment of other sources of funding being brought to the project (in addition to the required 25 percent contribution from the agricultural producer or rural small business for the cost of an energy audit). Leveraged funds should be clearly identified as cash and the source. Written documentation/confirmation from the party committing a specific amount of leveraged funds is required;

(ix) Outreach activities/marketing efforts specific to conducting energy audit and renewable energy development assistance including:

(A) Project title;

(B) goals of the project;

(C) identified need;

(D) target audience;

(E) timeline and type of activities/action plan; and

(F) marketing strategies.

(x) Method and rationale used to select the areas and businesses that will receive the service;

(xi) Brief description of how the work will be performed, including whether organizational staff, consultants, or contractors will be used;

(6) The most recent financial audit (not more than 18 months old) of the entity, or subdivision thereof, that will be performing the proposed work. If

such an audit is not available, the latest financial information that shows the financial capacity of the entity, or subdivision thereof, to perform the proposed work. Such information may include, but not be limited to, the most recent year-end balance sheet, income statement, and other appropriate data that identifies the entity's resources;

(7) Except for applicants who are individuals, a Dun and Bradstreet Data Universal Numbering System (DUNS) number; and

(8) Intergovernmental review comments from the State Single Point of Contact, or evidence that the State has elected not to review the project under Executive Order 12372.

*C. Submission Dates, Times, and Addresses*

Complete applications must be received in the appropriate USDA Rural Development State Office no later than 4:30 pm local time June 9, 2009. Neither incomplete applications nor complete applications received after this date and time will be considered, regardless of the postmark on the application.

Applicants may submit their applications either to the Rural Development Rural Energy Coordinator in the State in which the applicant's principal office is located or via grants.gov. A list of Rural Development Rural Energy Coordinators is provided in the Addresses section of this Notice.

*D. Intergovernmental Review*

The Rural Energy for America Program is subject to the provisions of the Executive Order 12372, which requires intergovernmental consultation with State and local officials.

*E. Funding Limitations*

Grant funds awarded for energy audit and renewable energy development assistance projects may be used only to pay eligible project costs, as described in paragraph (1) below. Grant funds awarded for energy audits and renewable energy development assistance projects are prohibited from being used to pay costs associated with the items listed in paragraph (2) below.

(1) *Eligible project costs.* Eligible project costs are those post application expenses directly related to conducting and promoting energy audits and renewable energy development assistance, which include but are not limited to:

(i) Salaries directly or indirectly related to the project;

(ii) Travel expenses directly related to conducting energy audits or renewable energy development assistance, as well as outreach and marketing activities;

(iii) Office supplies (e.g. paper, pens, file folders); and

(iv) Administrative expenses, up to a maximum of 5 percent of the grant, which include but are not limited to:

(A) Utilities;

(B) office space; and

(C) office equipment (e.g. computers, printers, copiers, scanners).

(2) *Ineligible grant purposes.* Grant funds may not be used to:

(i) Pay any costs of preparing the application package for funding under this Notice;

(ii) Pay any costs of the project incurred prior to the application date of the grant made under this Notice;

(iii) Fund political or lobbying activities;

(iv) Pay for assistance to any private business enterprise which does not have at least 51 percent ownership by those who are either citizens of the United States or who reside in the United States after being legally admitted for permanent residence; and

(v) Pay any judgment or debt owed to the United States.

(3) *Funding limitations.* The following funding limitations apply.

(i) *Maximum grant amount.* The maximum aggregate amount of grants awarded to any one recipient under this Notice cannot exceed $100,000.

(ii) *Energy audits.* A recipient of a grant under this Notice that conducts an energy audit shall require that, as a condition of the energy audit, the agricultural producer or rural small business pay at least 25 percent of the cost of the energy audit. Further, the amount paid by the agricultural producer or rural small business will be retained by the recipient as a contribution towards the cost of the energy audit.

**V. Grant Provisions**

This section identifies the process and procedures the Agency will use to process and select applications, award grants, and administer grants.

*A. Processing and Scoring Applications*

(1) *Application review.* Upon receipt of an application, the Agency will conduct a review to determine if the applicant and project are eligible. The Agency will notify the applicant in writing of the Agency's findings. If the Agency has determined that either the applicant or project is ineligible, it will include in the notification the reason(s) for its determination(s).

(2) *Incomplete applications.* Incomplete applications will be rejected. Applicants will be informed of the elements that made the application incomplete. If a resubmitted application is received by the applicable application deadline, the Agency will reconsider the application.

(3) *Subsequent ineligibility determinations.* If at any time an application is determined to be ineligible, the Agency will notify the applicant in writing of its determination, and processing of the application will cease.

(4) *Application withdrawal.* During the period between the submission of an application and the execution of documents, the applicant must notify the Agency, in writing, if the project is no longer viable or the applicant no longer is requesting financial assistance for the project. When the applicant so notifies the Agency, the selection will be rescinded or the application withdrawn.

(5) *Application deadline.* Each complete and eligible application received by the applicable Rural Development State office by 4:30 pm local time June 9, 2009 will be scored. Any application received by the applicable Rural Development State office after 4:30 p.m. local time June 9, 2009, will not be considered.

(6) *Scoring.* The Agency will score each application using the following criteria, with a maximum score of 100 points possible.

(i) *Project proposal (maximum score of 10 points).* The applicant will be scored based on its in-house ability to conduct audits versus using third party auditing organizations as illustrated in the application.

(A) If the applicant proposes to use at least 51% of the awarded funding to employ internal, qualified auditors and/or renewable energy specialists for program implementation, up to 10 points will be awarded as follows:

(*i*) If the percentage is between 51% and 75%, 5 points will be awarded.

(*ii*). If the percentage is more than 75%, 10 points will be awarded.

(B) If the applicant proposes to use less than 51% of the awarded funding to employ internal, qualified auditors and/or renewable energy specialists for program implementation, zero points will be awarded.

(ii) *Use of Grant Funds for Administrative Expenses (maximum score of 10 points).* Grantees selected to participate may use up to 5 percent of their award for administrative expenses.

(A) If the applicant proposes to use none of the grant funds for Administrative Expenses, 10 points will be awarded.

(B) If the applicant proposes to use a portion (up to 5%) of the grant funds for Administrative Expenses, zero points will be awarded.

(iii) *Applicant's organizational experience in completing proposed activity (maximum score of 15 points).* The applicant will be scored on the experience of the organization in meeting the benchmarks below. This means that an organization must have been in business and provided services as noted in the scoring requirements. An organization's experience must be documented with references and resumes. Points will be awarded as follows:

(A) More than 3 years of experience, 15 points will be awarded.

(B) At least 2 years and up to and including 3 years of experience, 10 points will be awarded.

(C) At least 1 year and up to 2 years of experience, 5 points will be awarded.

(D) Less than 1 year of experience, 0 points will be awarded.

(iv) *Geographic scope of project in relation to identified need (maximum score of 10 points)*

(A) If the applicant's proposed or existing rural service area is State-wide or includes all or parts of multiple states, and the marketing and outreach plan has identified needs throughout that service area, 10 points will be awarded.

(B) If the applicant's proposed or existing rural service area consists of multiple counties in a single State and the marketing and outreach plan has identified needs throughout that service area, 7.5 points will be awarded.

(C) If the applicant's rural service area consists of a single county or municipality and the marketing and outreach plan has identified needs throughout that service area, 5 points will be awarded.

(v) *Number of agricultural producers/rural small businesses to be served (maximum score of 15 points).*

(A) If the applicant plans to provide audits to ultimate recipients with average audit costs of $1,000 or less, 15 points will be awarded.

(B) If the applicant plans to provide audits to ultimate recipients with average audit costs over $1,000 but less than $1,500, 10 points will be awarded.

(C) If the applicant plans to provide audits to ultimate recipients with average audit costs of $1,500 but less than $2,000, 5 points will be awarded.

(vi) *Potential of project to produce energy savings and its attending environmental benefits (maximum score of 25 points).* Applicants can be awarded points under both paragraphs (vi)(A) and (B).

(A) If the applicant has an existing program that can demonstrate the achievement of energy savings with the agricultural producers and/or rural small businesses it has served, 13 points will be awarded.

(B) If the applicant provides evidence that it has received awards in recognition for its renewable energy, energy savings, or energy-based educational programming, up to 12 points will be awarded based on number and rigorousness of the competition for each award.

(vii) *Marketing and outreach plan (maximum of 10 points).* If the applicant includes in the application a marketing and outreach plan and provides a satisfactory discussion of each of the following criteria, two points for each of the following will be awarded:

(*A*) The goals of the project;

(*B*) Identified need;

(*C*) Target beneficiaries;

(*D*) Timeline and action plan; and

(*E*) Marketing strategies and supporting data for strategies.

(viii) *Level and commitment of other funds for the project (not including the 25 percent required contribution from ultimate recipients for the cost of an energy audit) (maximum score of 5 points).*

(A) If the applicant proposes to leverage grant funding with 50% or more in non-State and non-federal government matching funds for the subject grant, and has a written commitment for those funds, 5 points will be awarded.

(B) If the applicant proposes leverage grant funding with less than 50% but more than 20% in non-State and non-federal government matching funds for the subject grant, and has a written commitment for those funds, 2 points will be awarded.

(C) If the applicant proposes less than 20% in non-State and non-federal government matching funds, 0 points will be awarded.

*B. Award Process*

(1) *Ranking of applications.* All scored applications will be ranked by the Agency as soon after the application deadline as possible. All applications that are ranked will be considered for selection for funding.

(2) *Selection of applications for funding.* Using the ranking created under paragraph B(1) of this section, the Agency will consider the score an application has received compared to the scores of other applications in the priority list, with higher scoring applications receiving first consideration for funding.

(i) If after the majority of applications have been funded, insufficient funds remain to fund the next highest scoring application, the Agency may elect to fund a lower scoring application. Before this occurs, the Administrator, as applicable, will provide the applicant of the higher scoring application the opportunity to reduce the amount of its grant request to the amount of funds available. If the applicant agrees to lower its grant request, it must certify that the purposes of the project can be met, and the Administrator must determine the project is financially feasible at the lower amount.

(ii) The Agency will notify, in writing, applicants whose applications have been selected for funding.

(3) *Disposition of ranked applications not funded.* Based on the availability of funding, a ranked application may not be funded in the fiscal year in which it was submitted. Such ranked applications will not be carried forward into the next fiscal year and the Agency will notify the applicant in writing.

(4) *Intergovernmental review.* If State or local governments raise objections to a proposed project under the intergovernmental review process that are not resolved within 90 days of the Agency's selection of the application, the Agency will rescind the selection and will provide the applicant with a written notice to that effect. The Agency, in its sole discretion, may extend the 90-day period if it appears resolution is imminent.

*C. Actions Prior to Grant Closing*

(1) *Changes in project cost or scope.* If there is a significant reduction in project cost or changes in project scope, the applicant's funding needs, eligibility, and scoring, as applicable, will be reassessed. Decreases in Agency funds will be based on revised project costs and other selection factors; however, other factors, including Agency regulations used at the time of grant approval, will remain the same. Obligated grant funds not needed to complete the project will be de-obligated.

(2) *Evidence of and disbursement of other funds.* Applicants expecting funds from other sources for use in completing projects being partially financed with Agency funds must have these funds from other such sources prior to grant closing. Agency funds will not be expended in advance of funds committed to the project from other sources without prior Agency approval.

*D. Letter of Conditions and Grant Agreement*

(1) *Letter of conditions.* The Agency will notify the approved applicant in writing, setting out the conditions under which the grant will be made. The notice will include those matters necessary to ensure that the proposed

grant is completed in accordance with the terms of the scope of work and budget, that grant funds are expended for authorized purposes, and that the applicable requirements prescribed in the relevant Department regulations are complied with. The Letter of Conditions will be sent to the applicant.

(2) *Applicant's intent to meet conditions.* Upon reviewing the conditions and requirements in the letter of conditions, the applicant must complete, sign, and return a Form RD 1942–46, ''Letter of Intent to Meet Conditions,'' to the Agency; or if certain conditions cannot be met, the applicant may propose alternate conditions to the Agency. The Agency must concur with any changes proposed to the letter of conditions by the applicant before the application will be further processed.

(3) *Grant agreement, forms, and certifications.* Prior to grant approval, the applicant must complete, sign, and return a grant agreement (published at the end of this Notice). In addition, the following forms and certifications must be submitted prior to grant approval:

(A) Form RD 1942–46;''

(B) Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions;''

(C) Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions,'' including certification from any person or entity you do business with as a result of this government assistance that they are not debarred or suspended from government assistance;

(D) Form AD–1049, ''Certification Regarding Drug-Free Workplace Requirements (Grants) Alternative I—For Grantees Other Than Individuals;''

(E) Form SF–LLL, ''Disclosure Form to Report Lobbying'' or Exhibit A–1 of RD Instruction 1940–Q, ''Certification for Contracts, Grants, and Loans;'' and

(F) Form RD 400–4, ''Assurance Agreement.''

(4) *Grant approval.* Form RD 1940–1 must be signed by the applicant.

(i) The applicant will be sent a copy of the executed Form RD 1940–1, the approved scope of work, and a grant agreement (published at the end of this Notice). The grant will be considered closed on the obligation date.

(ii) The grantee must abide by all requirements contained in the Grant Agreement, this Notice, and any other applicable Federal statutes or regulations. Failure to follow these requirements may result in termination of the grant and adoption of other available remedies.

*E. Fund Disbursement*

The Agency will determine, based on the applicable Departmental regulations, whether disbursement of a grant will be by advance or reimbursement. A SF–270, ''Request for Advance or Reimbursement,'' must be completed by the grantee and submitted to the Agency no more often than monthly to request either advance or reimbursement of funds. Upon receipt of a properly completed SF–270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for advance or reimbursement.

*F. Use of Remaining Funds*

Funds remaining after all costs incident to the basic project have been paid or provided for are to be handled as specified in this section.

(1) Remaining funds are not to include grantee contributions.

(2) Remaining funds may be used based on prior approval by the Agency for eligible grant purposes, provided:

(i) The use will not result in major changes to the project;

(ii) the purpose of the grant remains the same; and

(iii) the project remains within its original scope.

(3) Grant funds not expended within 24 months from date of the grant agreement will be cancelled by the Agency. Prior to the actual cancellation, the Agency will notify, in writing, the grantee of the Agency's intent to cancel the remaining funds.

*G. Monitoring and Reporting Project Performance*

(1) *Monitoring of projects.* Grantees are responsible for ensuring all activities are performed within the approved scope of work and that funds are only used for approved purposes. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, financial resources appropriately expended by contractors (if applicable), and any other performance objectives identified in the scope of work are being achieved. To the extent resources are available, the Agency will monitor grantees to ensure that activities are performed in accordance with the Agency-approved scope of work and to ensure that funds are expended for approved purposes. The Agency's monitoring of Grantees neither relieves the Grantee of its responsibilities to ensure that activities are performed within the scope of work approved by the Agency and that funds are expended for approved purposes only nor provides recourse or a defense to the Grantee should the Grantee conduct unapproved activities, engage in unethical conduct, engage in activities that are or give the appearance of a conflict of interest, or expend funds for unapproved purposes.

(2) *Financial status reports.* A SF–269, ''Financial Status Report,'' and a project performance activity report will be required of all grantees on a semiannual basis. The grantee will complete the project within the total sums available to it, including the grant, in accordance with the scope of work and any necessary modifications thereof prepared by grantee and approved by the Agency.

(3) *Performance reports.* Grantees must submit to the Agency, in writing, semiannual performance reports and a final performance report, once all project activities are completed. Grantees are to submit an original of each report to the Agency.

(i) *Semiannual performance reports.* Project performance reports shall include, but not be limited to, the following:

(A) A comparison of actual accomplishments to the objectives established for that period (*e.g.* , the number of audits performed, number of recipients of renewable energy development assistance);

(B) Problems, delays, or adverse conditions, if any, that have in the past or will in the future affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(C) Percent of financial resources expended on contractors; and

(D) Objectives and timetable established for the next reporting period.

(ii) *Final performance report.* A final performance report will be required with the final Financial Status Report within 90 days after project completion. In addition to the information required under paragraph (3)(i) above, the final performance report must contain the information specified in paragraphs (3)(ii)(A) and (3)(ii)(B) below, as applicable, of this section.

(A) For energy audit projects, the final performance report must provide complete information regarding:

(*i*) The number of audits conducted,

(*ii*) a list of recipients (agricultural producers and rural small businesses)

with their North American Industry Classification System code,

(*iii*) the location of each recipient,

(*iv*) the cost of each audit,

(*v*) the expected energy saved for each audit conducted if the audit is implemented, and

(*vi*) the percent of financial resources expended on contractors.

(B) For renewable energy development assistance projects, the final performance report must provide complete information regarding:

(*i*) A list of recipients with their North American Industry Classification System code,

(*ii*) the location of each recipient,

(*iii*) the expected renewable energy that would be generated if the projects were implemented, and

(*iv*) the percent of financial resources expended on contractors.

(4) *Final status report.* One year after submittal of the final semiannual performance report, the Grantee will provide the Grantor a final status report on the number of projects that are proceeding with one or all of the Grantee's recommendations, including the amount of energy saved and the amount of renewable energy generated, as applicable.

(5) *Other reports.* The Agency may request any additional project and/or performance data for the project for which grant funds have been received.

*H. Financial Management System and Records*

(1) The grantee will provide for Financial Management Systems that will include:

(i) Accurate, current, and complete disclosure of the financial result of each grant.

(ii) Records that identify adequately the source and application of funds for grant-supporting activities, together with documentation to support the records. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

(iii) Effective control over and accountability for all funds. Grantee shall adequately safeguard all such assets and shall ensure that funds are used solely for authorized purposes.

(2) The grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after completion of grant activities except that the records shall be retained beyond the 3-year period if audit findings have not been resolved or if directed by the United States. Microfilm copies may be substituted in lieu of original records. The Agency and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the grantee which are pertinent to the specific grant for the purpose of making audit, examination, excerpts, and transcripts.

*I. Audit Requirements*

Grantees must provide an annual audit in accordance with 7 CFR part 3052.

*J. Grant Servicing*

Grants will be serviced in accordance with Departmental regulations and 7 CFR part 1951, subparts E and O. Grantees will permit periodic inspection of the project operations by a representative of the Agency. All non-confidential information resulting from the Grantee's activities shall be made available to the general public on an equal basis.

*K. Programmatic Changes*

The Grantee shall obtain prior Agency approval for any change to the scope or objectives of the approved project. Failure to obtain prior approval of changes to the scope of work or budget may result in suspension, termination, and recovery of grant funds.

*L. Transfer of Obligations*

Subject to Agency approval, an obligation of funds established for a grantee may be transferred to a different (substituted) grantee provided:

(1) The substituted grantee

(i) is eligible;

(ii) has a close and genuine relationship with the original grantee; and

(iii) has the authority to receive the assistance approved for the original grantee; and

(2) The need, purpose(s), and scope of the project for which the Agency funds will be used remain substantially unchanged.

*M. Grant Close Out and Related Activities*

In addition to the requirements specified in the Departmental regulations, failure to submit satisfactory reports on time under the provisions of Section V.G., Monitoring and Reporting Project Performance, requirements may result in the suspension or termination of a grant. The provisions of this section apply to grants and sub-grants.

**VI. Administration Information**

*A. Notice of Eligibility*

If an applicant is determined by the Agency to be eligible for participation, the Agency will notify the applicant in writing. If an applicant is determined by the Agency to be ineligible, the Agency will notify the applicant, in writing, as to the reason(s) the applicant was rejected. Such applicant will have review and appeal rights as specified in this Section.

*B. Administrative and National Policy Requirements*

(1) *Review or appeal rights.* A person may seek a review of an Agency decision under this Notice from the appropriate Agency official that oversees the program in question or appeal to the National Appeals Division in accordance with 7 CFR part 11.

(2) *Notification of unfavorable decisions.* If at any time prior to grant approval it is decided that favorable action will not be taken on an application, the State Director will notify the applicant in writing of the decision and of the reasons why the request was not favorably considered. The notification will inform applicant officials of their rights to an informal review, mediation, and appeal of the decision in accordance with 7 CFR part 11.

*C. Exception Authority*

Except as specified in paragraphs (1) and (2) below, the Administrator may make exceptions to any requirement or provision of this Notice, if such exception is in the best financial interests of the Federal Government and is otherwise not in conflict with applicable laws.

(1) *Applicant eligibility.* No exception to applicant eligibility can be made.

(2) *Project eligibility.* No exception to project eligibility can be made.

*D. Member or Delegate Clause*

No member of or delegate to Congress shall receive any share or part of this grant or any benefit that may arise there from; but this provision shall not be construed to bar as a contractor under the grant a publicly held corporation whose ownership might include a member of Congress.

*E. Environmental Review*

All grants made under this subpart are subject to the requirements of 7 CFR part 1940, subpart G. Applications for technical assistance or planning assistance are categorically excluded from the environmental review process by 7 CFR 1940.333. Applicants for grant

funds must consider and document within their plans the important environmental factors within the planning area and the potential environmental impacts of the plan, as well as the alternatives considered.

*F. Other USDA Regulations*

Energy audit and renewable energy development assistance projects funded under this Notice are subject to the provisions of the Department regulations, as applicable, which are incorporated by reference herein.

**VII. Agency Contacts**

*Notice Contact.* For information about this Notice, please contact the Energy Branch, USDA Rural Development, STOP 3225, Room 6870, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 720–1400.

For assistance on energy audit and renewable energy development assistance grants, please contact of the applicable Rural Development's Rural Energy Coordinator, as provided in the Addresses section of this Notice.

**VIII. Non-Discrimination Statement**

USDA prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider and employer.''

**IX. Civil Rights Compliance Requirements**

All grants made under this Notice are subject to title VI of the Civil Rights Act of 1964 and part 1901, subpart E.

Dated: March 5, 2009.

**Pandor Hadjy,**

*Acting Deputy Administrator, Rural Business-Cooperative Service.*

**Energy Audit and Renewable Energy Development Assistance Grant Agreement**

This Grant Agreement is a contract for receipt of grant funds under the Rural Energy for America program, Title IX, Section 9007 of the Food, Conservation, and Energy Act of 2008,'' (Pub. L. 110–234) between the Grantee and the United States of America acting through Rural Development, Department of Agriculture (Grantor). All references herein to ''Project'' refer to an energy audit project and/or renewable energy development assistance project identified in the scope of work submitted with the application. Should actual project costs be lower than projected in the scope of work, the final amount of grant may be adjusted.

*A. Assurance Agreement*

Grantee assures the Grantor that Grantee is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in the Departmental regulations as codified in 7 CFR parts 3000 through 3099, including but not necessarily limited to 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts, which are incorporated into this agreement by reference, any applicable Notices published in the **Federal Register** , and such other statutory provisions as are specifically contained herein.

Grantee and Grantor agree to all of the terms and provisions of any policy or regulations promulgated under Title IX, Section 9007 of the Food, Conservation, and Energy Act of 2008. Any application submitted by the Grantee for this grant, including any attachments or amendments, are incorporated and included as part of this Agreement. Any changes to these documents or this Agreement must be approved in writing by the Grantor.

The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement.

*B. Use of Grant Funds*

Grantee will use grant funds and leveraged funds only for the purposes and tasks included in the application and budget approved by the Grantor. Budget and approved use of funds are further described in the Grantor Letter of Conditions and amendments or supplements thereto. Any uses not provided for in the approved budget must be approved in writing by the Grantor.

*C. Civil Rights Compliance*

Grantee will comply with Executive Order 12898, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. This shall include collection and maintenance of data on the race, sex, disability, faith based (if applicable) and national origin of the Grantee's membership/ownership and employees. These data must be available to the Grantor in its conduct of Civil Rights Compliance Reviews, which will be conducted prior to grant closing and 3 years later, unless the final disbursement of grant funds has occurred prior to that date.

*D. Financial Management Systems*

1. Grantee will provide a Financial Management System in accordance with Departmental regulations as codified in 7 CFR parts 3000 through 3099, including but not necessarily limited to 7 CFR parts 3015 through 3019, 7 CFR part 3021, and 7 CFR part 3052, and successor regulations to these parts, including but not limited to:

(i) Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;

(ii) Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and ensure that they are used solely for authorized purposes;

(iii) Accounting records prepared in accordance with generally accepted accounting principles (GAAP) and supported by source documentation; and

(iv) Grantee tracking of fund usage and records that show matching funds and grant funds are used proportionally. The Grantee will provide verifiable documentation regarding matching funds usage, i.e., bank statements or copies of funding obligations from the matching source.

2. Grantee will retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after completion of grant activities, except that the records shall be retained beyond the 3-year period if

audit findings have not been resolved or if directed by the United States. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee which are pertinent to the grant for the purpose of making audits, examinations, excerpts, and transcripts.

*E. Procurement*

Grantee will comply with the applicable procurement requirements of 7 CFR part 3015 regarding standards of conduct, open and free competition, access to contractor records, and equal employment opportunity requirements.

*F. Reporting*

1. Grantee will after grant approval through project completion:

(i) Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a semiannual basis (due 30 working days after end of the semiannual period). For the purposes of this grant, semiannual periods end on June 30 and December 31. The financial status report must show how grant funds and leveraged funds have been used to date and project the funds needed and their purposes for the next quarter. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include the following:

(A) *Semiannual performance reports.* Project performance reports shall include, but not be limited to, the following:

(*1*) A comparison of actual accomplishments to the objectives established for that period (e.g., the number of audits performed, number of recipients of renewable energy development assistance);

(*2*) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall project objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(*3*) Percent of financial resources expended on contractors; and

(*4*) Objectives and timetable established for the next reporting period.

(B) *Final performance report.* A final performance report will be required with the final Financial Status Report.

(*1*) For energy audit projects, the final performance report must provide the information required in a semiannual performance report; complete information regarding the number of audits conducted; a list of recipients with their North American Industry Classification System code; the location of the recipient; the cost of each audit; the expected energy saved for each audit conducted if the audit is implemented; the number of jobs created and saved for an agricultural producer and rural small business, as applicable, as a result of the grant; and the percent of financial resources expended on contractors.

(*2*) For renewable energy development assistance projects, the final performance report must provide the information required in a semiannual performance report; complete information regarding a list of recipients with their North American Industry Classification System code; the location of the recipient; the expected renewable energy that would be generated if the projects were implemented; and the percent of financial resources expended on contractors.

(*ii*) For the year(s) in which grant funds are received, the Grantee will provide an annual financial statement to the Grantor.

2. Grantee will, after project completion:

(i) Allow Grantor access to the records and performance information obtained under the scope of the project; and

(ii) One year after submittal of the final semiannual performance report, the Grantee will provide the Grantor a final status report on the number of projects that are proceeding with one or all of the Grantee's recommendations, including the amount of energy saved and the amount of renewable energy generated, as applicable.

*G. Grant Disbursement*

Unless required by funding partners to be provided on a pro rata basis with other funding sources, grant funds will be disbursed after all other funding sources have been expended.

1. Requests for reimbursement may be submitted monthly or more frequently if authorized to do so by the Grantor. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

2. Grantee shall not request reimbursement for the Federal share of amounts withheld from contractors to ensure satisfactory completion of work until after it makes those payments.

3. Payment shall be made by electronic funds transfer.

4. Standard Form 270, ''Request for Advance or Reimbursement,'' or other format prescribed by Grantor shall be used to request Grant reimbursements.

*H. Use of Remaining Grant Funds*

Grant funds not expended within 24 months from date of this agreement will be cancelled by the Agency. Prior to the actual cancellation, the Agency will notify, in writing, the grantee of the Agency's intent to cancel the remaining funds.

*In witness whereof*, Grantee has this day authorized and caused this Agreement to be signed in its name and its corporate seal to be hereunto affixed and attested by its duly authorized officer(s) thereunto, and the Grantor has caused this Agreement to be duly executed in its behalf by:

GRANTOR:

[ [SEAL]

Name:

Date

Title:

UNITED STATES OF AMERICA
DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT

GRANTEE:

[ [SEAL]

Name:

Date

Title:

[FR Doc. E9–5154 Filed 3–10–09; 8:45 am]

BILLING CODE 3410–XY–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**A–533–847**

### 1–Hydroxyethylidene–1, 1–Diphosphonic Acid from India: Notice of Final Determination of Sales at Less Than Fair Value

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (the Department) has determined that 1–hydroxyethylidene–1, 1–diphosphonic acid (HEDP) from India is being, or is likely to be, sold in the United States at less–than-fair–value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the ''Continuation of Suspension of Liquidation'' section of this notice.

**EFFECTIVE DATE:** March 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Brian Smith and Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1766 and (202) 482–3773, respectively.

**SUPPLEMENTARY INFORMATION:**

## Background

On October 21, 2008, the Department published in the **Federal Register** its preliminary determination in the antidumping duty investigation of HEDP from India. *See 1–Hydroxyethylidene–1, 1–Diphosphonic Acid from the Republic of India and the People's Republic of China: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 62465 (October 21, 2008) (*Preliminary Determination*).

We conducted verification of the questionnaire responses submitted by Aquapharm Chemicals Private Limited (Aquapharm) in November 2008. *See* Memorandum to The File from Case Analysts entitled ''Verification of the Questionnaire Responses of Aquapharm Chemicals Pvt. Ltd. (Aquapharm) in the Antidumping Duty Investigation of 1–Hydroxyethylidene–1, 1–Diphosphonic Acid (HEDP) from India,'' dated January 13, 2009 (Verification Report). The verification report is on file and available in the Central Records Unit (CRU), Room 1117 of the Department's main building.

On January 26, 2009, Aquapharm and the petitioner submitted case briefs. On February 2, 2009, Aquapharm and the petitioner submitted rebuttal briefs. As neither party requested a hearing, a hearing was not held in this case.

## Period of Investigation

The period of investigation (POI) is January 1, 2007, to December 31, 2007. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition.

## Scope of Investigation

The merchandise covered by this investigation includes all grades of aqueous, acidic (non–neutralized) concentrations of 1–hydroxyethylidene–1, 1–diphosphonic acid[1], also referred to as hydroxethylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809–21–4. The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of this investigation is dispositive.

[1] $C_2H_8O_7P_2$ or $C(CH_3)(OH)(PO_3H_2)_2$

## Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the ''Issues and Decision Memorandum for the Final Determination in the Less–Than-Fair–Value Investigation of 1–Hydroxyethylidene–1, 1–Diphosphonic Acid from India'' from John Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration (Decision Memorandum), dated March 5, 2009, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in the Decision Memorandum, which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

## Verification

As provided in section 782(i) of the Act, we verified the information submitted by Aquapharm for use in our final determination. We used standard verification procedures including an examination of relevant accounting and production records, and original source documents provided by Aquapharm. *See* Verification Report.

## Final Determination Margins

| Manufacturer/Exporter | Weighted–Average Margin (percent) |
|---|---|
| Aquapharm Chemicals Private Limited | 3.10 |
| All Others | 3.10 |

We determine that the following weighted–average dumping margins exist for the period January 1, 2007, to December 31, 2007:

## Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

## Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of HEDP from India, entered, or withdrawn from warehouse, for consumption on or after October 21, 2008, the date of publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margins, as indicated above and as follows: (1) the rate for Aquapharm will be 3.10 percent; (2) if the exporter is not a firm identified in this investigation, but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 3.10 percent. These suspension of liquidation instructions will remain in effect until further notice.

## International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. *See* section 735(c)(2) of the Act. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

## Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information

disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: March 5, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

**Appendix Issues in Decision Memorandum**

1. U.S. Date of Sale
2. U.S. Sales Type Designation
3. Level of Trade
4. U.S. Credit Expenses and Inventory Carrying Costs
5. Verification Corrections

[FR Doc. E9–5231 Filed 3–10–09; 8:45 am]

**BILLING CODE: 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–934]**

### 1–Hydroxyethylidene–1, 1–Diphosphonic Acid from the People's Republic of China: Final Determination of Sales at Less Than Fair Value

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**EFFECTIVE DATE:** March 11, 2009.

**SUMMARY:** The Department of Commerce (the ''Department'') has determined that 1–hydroxyethylidene–1, 1–diphosphonic acid (''HEDP'') from the People's Republic of China (''PRC'') is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''the Act''). The final dumping margins for this investigation are listed in the ''Final Determination Margins'' section of this notice.

**FOR FURTHER INFORMATION CONTACT:** Maisha Cryor or Shawn Higgins, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5831 and (202) 482–0679, respectively.

**SUPPLEMENTARY INFORMATION:**

**Case History**

On October 21, 2008, the Department published its preliminary determination that HEDP from the PRC is being, or is likely to be, sold in the United States at LTFV, as provided in the Act. *See 1–Hydroxyethylidene–1, 1–Diphosphonic Acid From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 62470 (October 21, 2008) (''*Preliminary Determination*''). For the *Preliminary Determination*, the Department calculated a 24.30 percent dumping margin for Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd. (''Wujin Water''). The Department assigned a 72.42 percent dumping margin to the PRC–wide entity including Changzhou Kewei Fine Chemical Factory (''Kewei'') and a 24.30 percent dumping margin to separate rate applicants Changzhou Wujin Fine Chemical Factory Co., Ltd. (''Wujin Fine Chemical'') and Jiangsu Jianghai Chemical Group Co., Ltd. (''Jiangsu Jianghai''). On December 3, 2008, Wujin Water provided the Department with its final submission of surrogate values. In December 2008, Compass Chemical International LLC (''Petitioner''), Wujin Water, Wujin Fine Chemical, and Jiangsu Jianghai submitted case briefs and rebuttal briefs.[1] On January 14, 2009, the Department held a public hearing.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by the parties to this investigation are addressed in the ''Issues and Decision Memorandum for the Final Determination in the Less–Than-Fair–Value Investigation of 1–Hydroxyethylidene–1, 1–Diphosphonic Acid from the People's Republic of China'' (''Issues and Decision Memorandum''), dated concurrently with this notice, which is hereby adopted by this notice in its entirety. A list of the issues which parties raised and to which we respond in the Issues and Decision Memorandum is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room 1117, and is accessible on the internet at http://www.trade.gov/ia. The paper copy and electronic version of the memorandum are identical in content.

[1] Wujin Water, Wujin Fine Chemical, and Jiangsu Jianghai submitted case briefs and rebuttal briefs jointly.

**Verification**

As provided in section 782(i) of the Act, we verified the information submitted by Wujin Water for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

**Changes Since the Preliminary Determination**

Based on our analysis of comments received, we have made certain adjustments to the margin calculations used in the *Preliminary Determination*. These adjustments are discussed in detail in the Issues and Decision Memorandum and are listed below:

1. We recalculated the financial ratios using the April 2005 through March 2006 financial statement of Rencal Chemicals (India) Limited (''Rencal Chemicals'').
2. We recalculated the surrogate value for phosphorus trichloride using the April 2004 through March 2005 and April 2005 through March 2006 financial statements of Rencal Chemicals.
3. We recalculated the surrogate value for steam using the April 2007 through March 2008 financial statement of Hindalco Industries Ltd.
4. We revised the transportation distance of chemical drums.

**Period of Investigation**

The period of investigation (''POI'') is July 1, 2007, through December 31, 2007. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition, *i.e.*, March 2008. *See* 19 CFR 351.204(b)(1).

**Scope of the Investigation**

The merchandise covered by this investigation includes all grades of aqueous, acidic (non–neutralized) concentrations of 1–hydroxyethylidene–1, 1–diphosphonic acid[2], also referred to as hydroxethlylidenediphosphonic acid, hydroxyethanediphosphonic acid, acetodiphosphonic acid, and etidronic acid. The CAS (Chemical Abstract Service) registry number for HEDP is 2809–21–4. The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at subheading 2931.00.9043. It may also enter under HTSUS subheading 2811.19.6090. While HTSUS subheadings are provided for convenience and customs purposes

[2] $C_2H_8O_7P_2$ or $C(CH_3)(OH)(PO_3H_2)_2$.

only, the written description of the scope of this investigation is dispositive.

**Scope Comments**

The Department received no comments regarding the scope of this investigation.

**Non–Market Economy Treatment**

In the Preliminary Determination, the Department considered the PRC to be a non–market economy (''NME'') country. In accordance with section 771(18)(C)(i) of the Act, any determination that a country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Preliminary Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). No party has commented on the Department's classification of the PRC as an NME. Therefore, for the final determination, we continue to consider the PRC to be an NME.

**Separate Rates**

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994), and 19 CFR 351.107(d).

In the *Preliminary Determination*, we found that Wujin Fine Chemical and Jiangsu Jianghai demonstrated eligibility for separate–rate status. Since the publication of the *Preliminary Determination*, no party has commented on the eligibility of Wujin Fine Chemical and Jiangsu Jianghai for separate–rate status. For the final determination, we continue to find that the evidence placed on the record of this investigation by Wujin Fine Chemical and Jiangsu Jianghai demonstrates both *de jure* and *de facto* absence of government control with respect to each company's respective exports of the merchandise under investigation. Thus, we continue to find that Wujin Fine Chemical and Jiangsu Jianghai are eligible for separate–rate status. Normally the separate rate is determined based on the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding zero and *de minimis* margins or margins based entirely on adverse facts available (''AFA''). *See* section 735(c)(5)(A) of the Act. In this case, because there are no rates other than *de minimis* or those based on AFA, we have determined to take a simple average of the AFA and the *de minimis* rate calculated for Wujin Water as a reasonable method for purposes of determining the rate assigned to Wujin Fine Chemical and Jiangsu Jianghai. *See* section 735(c)(5)(B) of the Act. We note that this methodology is consistent with the Department's past practice. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination; Light–Walled Rectangular Pipe and Tube From the Republic of Korea*, 73 FR 5794, 5800 (January 31, 2008) (''*Preliminary Determination of Light–Walled Pipe''), unchanged in Final Determination of Sales at Less Than Fair Value: Light–Walled Rectangular Pipe and Tube from the Republic of Korea*, 73 FR 35655 (June 24, 2008) (''*Final Determination of Light–Walled Pipe*''); *see also* ''Corroboration'' section below.

We determined in the *Preliminary Determination* that because Kewei withdrew from the investigation, thus preventing the Department from asking additional questions on its separate rate status and preventing the Department from verifying its responses, the Department has no basis upon which to grant Kewei a separate rate. We received no comments on this denial of a separate rate. Although Kewei remains a mandatory respondent, the Department will continue to consider Kewei part of the PRC–wide entity because it failed to demonstrate that it qualifies for a separate rate.

**The PRC–Wide Rate**

In the *Preliminary Determination*, the Department found that certain companies did not respond to our requests for information. *See Preliminary Determination*, 73 FR at 62473–74. We treated these PRC producers/exporters as part of the PRC–wide entity because they did not demonstrate that they operate free of government control over their export activities. *Id.* In addition, in the *Preliminary Determination*, the Department applied total AFA to Kewei. We determined, as AFA, that Kewei was not eligible for a separate rate and we would treat Kewei as part of the PRC–wide entity. *Id.* No additional information was placed on the record with respect to any of these companies after the *Preliminary Determination*. Therefore, pursuant to section 776(a)(2)(A) of the Act, the Department continues to find that the use of facts available is appropriate to determine the PRC–wide rate.

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Notice of Rescission in Part and Intent to Rescind in Part*, 72 FR 14078, 14079 (March 26, 2007) (''*Preliminary Results of TRBs*''), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Final Results of 2005–2006 Administrative Review and Partial Rescission of Review*, 72 FR 56724 (October 4, 2007) and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Amended Final Results of 2005–2006 Administrative Review*, 72 FR 70302 (December 11, 2007) (''*Final Results of TRBs*''). *See also Statement of Administrative Action* accompanying the Uruguay Round Agreements Act (''SAA''), H.R. Doc. No. 103–316, Vol. 1 (1994), at 870. We determine that, because the PRC–wide entity, including Kewei, did not respond to our requests for information, the PRC–wide entity has failed to cooperate to the best of its ability. *See id.* Therefore, the Department finds that, in selecting from among the facts otherwise available, an adverse inference is appropriate for the PRC–wide entity.

Because we begin with the presumption that all companies within an NME country are subject to government control, and because only Wujin Water, Wujin Fine Chemical, and Jiangsu Jianghai have overcome that presumption, we are applying a single antidumping rate (*i.e.*, the PRC–wide entity rate) to all other exporters of

subject merchandise from the PRC. Such companies did not demonstrate entitlement to a separate rate. *See, e.g., Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706 (May 3, 2000). The PRC–wide entity rate applies to all entries of subject merchandise except for entries from Wujin Water, Wujin Fine Chemical, and Jiangsu Jianghai.

In the *Preliminary Determination*, we assigned to the PRC–wide entity the margin alleged in the petition, *i.e.*, 72.42 percent. *See Preliminary Determination*, 73 FR at 22331. For the final determination, we have continued to assign to the PRC–wide entity the rate of 72.42 percent.

**Corroboration**

Section 776(c) of the Act provides that, when the Department relies on secondary information in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. We have interpreted ''corroborate'' to mean that we will, to the extent practicable, examine the reliability and relevance of the information submitted. *See Preliminary Determination of TRBs*, 72 FR at 14080 (unchanged in *Final Results of TRBs*).

Because there are no respondents receiving rates other than *de minimis* or those based on AFA, we relied upon our pre–initiation analysis of the adequacy and accuracy of the information in the petition to corroborate the 72.42 percent petition margin selected as AFA for the PRC–wide entity. This corroborated margin was then used in the calculation of the rate assigned to Wujin Fine Chemical and Jiangsu Jianghai pursuant to section 735(c)(5)(B) of the Act. *See* ''Import Administration Antidumping Investigation Initiation Checklist: 1–Hydroxyethylidene–1, 1–Diphosphonic Acid from the People's Republic of China,'' (April 8, 2008). We note that this practice is consistent with the Department's past practice in instances where the only rates on the record are either de minimis or based entirely upon AFA. *See Preliminary Determination of Light–Walled Pipe*, 73 FR at 5797 (unchanged in *Final Determination of Light–Walled Pipe*). During the initiation stage, we examined evidence supporting the calculations in the petition and the supplemental information provided by Petitioner to determine the probative value of the margins alleged in the petition. During our pre–initiation analysis, we examined the information used as the basis of export price (''EP'') and normal value (''NV'') in the petition, and the calculations used to derive the alleged margins. Also during our pre–initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated key elements of the EP and NV calculations. *Id.* Therefore, for the final determination, the Department finds that the rate derived from the petition for purposes of initiation has probative value for the purpose of being selected as the AFA rate assigned to the PRC–wide entity, including Kewei, and used in the calculation of the rate assigned to Wujin Fine Chemical and Jiangsu Jianghai pursuant to 735(c)(5)(B) of the Act.

**Final Determination Margins**

We determine that the following percentage dumping margins exist for the POI:

| Manufacturer/Exporter | Weighted–Average Margin (Percent) |
|---|---|
| Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd.[3]. | 0.00 |
| Changzhou Wujin Fine Chemical Factory Co., Ltd.[4] ..... | 36.21 |
| Jiangsu Jianghai Chemical Group Co., Ltd.[5] | 36.21 |
| PRC–wide Entity (including Kewei) ..... | 72.42 |

[3] Nanjing University of Chemical Technology Changzhou Wujin Water Quality Stabilizer Factory Ltd. manufactures and exports subject merchandise.

[4] Changzhou Wujin Fine Chemical Factory Co., Ltd. manufactures and exports subject merchandise.

[5] Jiangsu Jianghai Chemical Group Co., Ltd. manufactures and exports subject merchandise.

**Disclosure**

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

**Continuation of Suspension of Liquidation**

In accordance with section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to continue to suspend liquidation of all entries of HEDP from the PRC, except those produced and exported by Wujin Water, as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption on or after October 21, 2008, the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margin amount by which the NV exceeds U.S. price, as follows: (1) The rate for the manufacturer/exporter combinations listed in the chart above will be the rate we have determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the PRC–wide entity rate; and (3) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non–PRC exporter. We are directing CBP not to suspend liquidation of imports of HEDP from the PRC produced and exported by Wujin Water, and entered, or withdrawn from warehouse, for consumption on or after October 21, 2008, the date of publication of the *Preliminary Determination* in the **Federal Register**. CBP shall not require a cash deposit or the posting of a bond for Wujin Water because we have calculated a margin of zero percent for Wujin Water. These suspension–of-liquidation instructions will remain in effect until further notice.

**International Trade Commission Notification**

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, within 45 days the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess, upon further instruction by the Department, antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

**Notification Regarding APO**

This notice also serves as a reminder to the parties subject to administrative

protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 5, 2009.

**Ronald K. Lorentzen,**

*Acting Assistant Secretary for Import Administration.*

**Appendix:**

**Issues in Decision Memorandum**

*Comment 1:* Financial Ratios
*Comment 2:* Surrogate Value for Phosphorus Trichloride
*Comment 3:* Surrogate Value for Chemical Drums
*Comment 4:* Surrogate Value for Steam
*Comment 5:* Treatment of Acetyl Chloride
*Comment 6:* Separate Rates for Wujin Fine Chemical and Jiangsu Jianghai
*Comment 7:* Combination Rate for Hong Kong Exporter

[FR Doc. E9–5237 Filed 3–10–09; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A- 570–881)**

### Malleable Cast Iron Pipe Fittings from the People's Republic of China: Notice of Rescission of the 2007–2008 Administrative Review of the Antidumping Duty Order

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** March 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Brendan Quinn, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5848.

**Background**

On December 1, 2008, the Department of Commerce (''the Department'') published a notice of opportunity to request an administrative review of the antidumping duty order on malleable cast iron pipe fittings from the People's Republic of China (''PRC''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 72764 (December 1, 2008). On December 30, 2008, LDR Industries (LDR) and Beijing Sai Lin Ke Hardware Co., Ltd. (SLK) (collectively, ''LDR/SLK'') requested that the Department conduct an administrative review of SLK's exports to the United States for the period December 1, 2007, through November 30, 2008. On December 31, 2008, Mueller Comercial de México, S. De R.L. de C.V. (''Mueller'') and Southland Pipe Nipples Company, Inc. (''Southland'') requested that the Department conduct an administrative review of Mueller's exports to the United States for the period December 1, 2007, through November 30, 2008. Pursuant to these requests, the Department published a notice of the initiation of the administrative review of the antidumping duty order on malleable cast iron pipe fittings from the PRC. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 5821 (February 2, 2009).

**Rescission of Review**

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the requests within 90 days of the date of publication of the notice of initiation. On February 11, 2009, LDR/SLK timely withdrew its request for a review of SLK, and no other interested party requested a review of this company. On February 12, 2009, Mueller and Southland timely withdrew their request for a review of Mueller, and no other interested party requested a review of this company. Therefore, the Department is rescinding this administrative review of the antidumping duty order on malleable cast iron pipe fittings from the PRC covering the period December 1, 2007, through November 30, 2008, in accordance with 19 CFR 351.213(d)(1).

**Assessment**

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the publication of this notice in the **Federal Register**.

**Notification to Interested Parties**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Pursuant to 19 CFR 351.402(f)(3), failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO, in accordance with 19 CFR 351.305 and as explained in the APO itself. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 3, 2009.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. E9–5119 Filed 3–10–09; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Cable Television Trade Mission to South Korea

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice and call for applications for the Cable Television Trade Mission to South Korea, June 3–5, 2009.

**Mission Description**

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service is organizing a Trade Mission to Seoul, South Korea, June 3–5, 2009. The mission will provide an excellent venue for U.S. companies to promote their television programming content, and broadcasting equipment and services. The Korea

Cable TV Association (KCTA), a pillar in the Korean broadcasting industry, and made up of over 100 network providers, has requested this trade mission be held in conjunction with their annual KCTA Trade Show, where a majority of the Korean network providers will be present and looking to purchase program content and broadcasting equipment. The participating U.S. companies will meet with Korean Cable TV system operators, program providers, and terrestrial TV and Internet protocol television (IPTV) service providers during the course of the show.

**Commercial Settings**

Korea's economy has recently moved away from a centrally planned, government-directed investment model toward a more market-oriented system. Korea's economic performance over the past 4 years has remained stable, at or above 4%, and currently is at 2%–3%. Korea is the United States' seventh-largest trading partner, ranking ahead of larger economies such as France, Italy, and India.

The Korean cable industry's many subsectors present considerable potential for growth and export opportunities. Korean cable television, launched in 1995, currently has an audience of over 12 million households. To date, 103 cable system operators (SOs) are transmitting cable TV content throughout the country. Digital terrestrial TV was introduced in 2001, with expectations of nationwide coverage by 2010. Digital cable TV services were launched in 2004, when the Korean National Assembly revised the broadcasting law, also allowing for increased foreign investment in Korean SOs and program providers. This investment will speed up the deployment of digital cable TV, which in turn means increased opportunities for equipment suppliers and program providers.

Korean cable TV SOs and program providers are now focused on digitizing most of their broadcasting facilities. After the introduction of direct-to-home (DTH) services in 2000, the Korea Digital Satellite Broadcasting consortium acquired the necessary license and launched pay TV services via its DTH satellite platform, SkyLife, whose subscribers number more than 1.96 million.

The Korean cable industry is now discovering that programming content is severely lacking, with providers often limited to showing amateur videos. Also driving the development of improved digital content are new and potentially exclusive channels, basic and premium tier channels, plus on-demand content from domestic and foreign program suppliers. The business of digital programming and content is made highly attractive by significant competition from cable, the rise in DTH services, the advent of IPTV, a projection that the digital TV universe will be almost all-pay by 2015, and major gains in consumer purchases of digital set-top-boxes (STBs).

Open IPTV will also try to join the industry in the near future. IPTV service will trigger strong demand for U.S.-based digital online content, a market estimated to have reached USD 180 million this year. The Korean Communications Commission is open to selecting more IPTV service providers that meet standards for technological expertise and business management, boosting opportunities for U.S. companies. The shortage of quality content for the growing new service platforms represents additional opportunities for already popular U.S. content providers, who are currently contributing 70% of Korea's foreign programming content. Best prospects for imported programming are in the areas of movies, sports, animation, drama and documentaries.

Market demand for U.S.-based mobile digital content is expected to grow by approximately 7% to 8% annually over the next several years, driven by digital multimedia broadcasting (DMB) service providers. Since December 2005, terrestrial providers have moved into DMB, which allows viewers to watch TV via a cell phone. The market for terrestrial DMB service is forecast to reach USD 730 million by 2010, while that of satellite DMB service is expected to grow to USD 640 million. Currently, the United States has only a 25% share of this market, but its share of the digital content market is at 80% and growing.

The market for TV broadcasting equipment and services also continues to grow. Although equipment is currently being procured primarily for terrestrial TV broadcasting, demand for digital equipment for cable and satellite TV services is forecast to be very strong over the next three to five years. Spending among the multi-station operators has increased opportunities for suppliers of digital equipment for terrestrial broadcasting. U.S. suppliers of a wide range of broadcasting equipment will continue to enjoy significant competitive advantages in technology and price. There are also no major market access barriers for broadcasting equipment, and most categories of equipment enter Korea with an 8% duty based on cost-insurance-freight (c.i.f.) value.

The telecom and broadcasting industries are transitioning into a new arena by combining each other's technologies in the IPTV services market, which is expected to grow at an average annual rate of 8%–9% until 2012, when it is projected to reach four million subscribers and collect USD one billion in revenue. Acknowledging that the existing Internet network does not have the capacity to manage the data traffic potentially generated by IPTV services, Korea's largest Internet service provider, KT, has embarked upon an ambitious program to connect every household in Korea with fiber-to-home services at a cost of USD one billion. There are currently 12.7 million Internet using households in Korea, representing about 88% of total households in Korea.

**Mission Goals**

The Cable Television Trade Mission to South Korea is designed to give U.S. firms excellent opportunities to promote their television broadcasting content, equipment and services to Korea's broadcasting industry. Mission participants will gain direct industry access through prearranged business-to-business appointments and networking events. They will also receive the most current information on the Korean market and available U.S. Government trade financing programs.

**Mission Scenario**

The mission will take place in conjunction with the 2009 Korea Cable TV Association Trade Show in Seoul, South Korea. The mission will include one-on-one business matchmaking appointments with prospective agents, distributors, and end-users; updates on major projects; Embassy briefings on doing business in Korea; and networking receptions. Activities may also include site visits and meetings with local government officials, as appropriate. The U.S. and Foreign Commercial Service in Seoul will continue to maintain a presence at the KCTA Trade Show on Saturday, June 6, and will assist any mission members wishing to remain to take advantage of visitor traffic at the show. This assistance is offered to the delegation at no additional cost. In addition, the timing of the mission will permit interested companies to attend a major industry event in China, the Shanghai TV Festival (STVF), June 8–12, 2009, should they wish to extend their stay in Asia.

**Proposed Timetable**

*Tuesday, June 2, 2009:*

Arrival in Seoul, South Korea.

Informal no-host dinner with U.S.

Commercial Service staff.
*Wednesday, June 3, 2009:*
Morning: Briefings by U.S. Embassy staff and local U.S. business executives.
Afternoon: One-on-one business appointments at KCTA Trade Show.
Evening: Networking reception.
*Thursday, June 4, 2009:*
One-on-one business appointments at KCTA Trade Show.
*Friday, June 5, 2009:*
Morning: One-on-one business appointments at KCTA Trade Show.
Afternoon: Walk the show floor/ Mission concludes.
*Saturday, June 6, 2009:*
Bonus day for companies to spend at show on their own, or depart Korea.

**Participation Requirements**

All parties interested in participating in the Cable Television Trade Mission to Korea must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 6 and maximum of 10 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in Korea as well as U.S. companies seeking to enter the Korean market for the first time may apply.

*Fees and Expenses:*

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be $3,565 for a large firm and $2,375 for a small or medium-sized enterprise (SME).* The fee for each additional firm representative (large firm or SME) is $350. Expenses for travel, lodging, most meals, and incidentals will be the responsibility of each mission participant. Access to the KCTA trade show will be complimentary for participants.

*Conditions for Participation:*

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the application may be rejected, additional information may be requested, or the lack of information may be taken into account when evaluating the application.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and contain at least 51% U.S. content of the value of the finished product or service.

*Selection Criteria for Participation:* Selection will be based on the following criteria:

• Suitability of the company's products or services in the Korean market and target sectors

• Applicant's potential for business in Korea, including likelihood of exports resulting from the mission

• Consistency of the applicant's goals and objectives with the stated scope of the trade mission

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

**Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner, and on a first come first serve basis. Outreach will include publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://www.ita.doc.gov/doctm/tmcal.html*) and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The International Trade Administration will explore and welcome outreach assistance from other interested organizations, including other U.S. Government agencies.

Recruitment for the mission will begin immediately and will close on April 24, 2009. Applications are available on-line on the mission Web site at *http://www.export.gov/ICTkoreamission*. They can also be obtained by contacting the Mission Project Officer listed below. Applications received after April 24, 2009, will be considered only if space and scheduling constraints permit.

*Contact:* Ms. Karen Dubin, U.S. Department of Commerce, Washington, DC 20230, Tel: 202–482–3786/Fax: 202–482–9000, e-mail: *Karen.Dubin@mail.doc.gov*.

Dated: March 6, 2009.

**Karen Dubin,**

*CS Trade Missions, Department of Commerce, Washington, DC.*

[FR Doc. E9–5295 Filed 3–10–09; 8:45 am]

**BILLING CODE 3510–DS–P**

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Notice and Call for Applications for the Executive Trade Mission to Libya and Algeria for the Period November 4–8, 2009

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice and call for applications for the Executive Trade Mission to Libya and Algeria for the period November 4–8, 2009.

**Mission Description**

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (USFCS) is organizing a Trade Mission to Tripoli, Libya and Algiers, Algeria November 4–8, 2009, to help U.S. firms find business partners and sell equipment and services in these markets. This mission will be led by a senior Commerce official. Targeted sectors include, but are not limited to, energy, infrastructure projects, information technology, environmental technology, and safety and security. The mission's goal is to provide U.S. participants with first-hand market information, access to government decision makers as appropriate, and one-on-one meetings with business contacts, including potential agents, distributors and partners, so that they can position themselves to enter or expand their presence in these markets.

**Commercial Setting**

*Libya*

Two-way trade between the United States and Libya has surged since 2004, with the easing of U.S. sanctions on Libya. U.S. merchandise exports have grown from US$39 million in 2004 to US$721 million in 2008, consisting mostly of machinery, vehicles, iron/steel, cereals, and electrical machinery.

Libya's per capita gross domestic product (GDP) is one of the highest in

Africa (US$12,400), and the Libyan government has budgeted over US$80 billion for infrastructure development, focusing on a number of large projects relating to residential housing, highways, railways, telecommunications, and irrigation. Libya's government is making efforts to diversify the economy and encourage private-sector participation in new manufacturing and service activities in the country. As Libya moves forward with its transition towards more private-sector led growth, the country holds potentially rich trade opportunities in almost every sector of the economy, from oil and gas to agriculture to telecommunications, medical equipment and services, education, and tourism.

Libya has a business culture where deals are made on the strength of personal contacts. This trade mission offers U.S. company representatives an excellent introduction to a broad range of Libyan officials as well as an opportunity to begin identifying appropriate business partners.

*Best Prospects*

*Energy:* The Libyan economy is dominated by the energy sector, which accounted for 90 percent of export earnings, about one quarter of GDP and 60 percent of public sector wages. The market is highly competitive, and more than forty foreign energy sector companies are active in Libya. Libya has high oil and gas reserves, and the Government has announced its intention to increase current oil production of 1.7 million barrels per day to its pre-sanctions rate of 3 million barrels per day by 2013. Libya's proven gas reserves amount to at least 46.4 trillion cubic feet, placing it 14th in the world; potential reserves are as high as 70–100 trillion cubic feet. Until relatively recently Libya did little with its considerable gas reserves, but National Oil Company Chairman Shukri Ghanem has signaled Libya's intention to double its production of natural gas over the next few years. With the deepening international market for natural gas, Libya is seeking both to export more gas and to increase its use to satisfy domestic energy needs (thereby freeing up additional oil for export).

Power demand is growing rapidly, by approximately 8–9 percent annually, and Libya plans to more than double current installed capacity by 2010, at a cost of over US$3.5 billion. About 60 percent of current power stations are oil-fired, although the General Electricity Company of Libya has announced plans to make a major effort to switch to gas-fired turbines.

*Infrastructure:* Emerging from two decades of international sanctions, Libya has extensive infrastructure development needs in almost every sector of the economy and region of the country. In November 2007, the government announced plans to spend more than US$123 billion on public works over five years. Contracting services and construction materials will be in great demand in the coming years to support major road, large-scale office complex, hotel, and residential housing projects.

*Information Technology:* Telecommunications infrastructure development is the responsibility of the state-owned General Post and Telecommunications Company (GPTC), created in 1984. GPTC oversees the operation of fixed and mobile lines, as well as Libyan Internet service providers (ISPs). GPTC has expanded landline coverage to many parts of Libya, although the quality of its infrastructure and service needs substantial improvement. In 1996, GPTC spun off mobile phone company Al-Madar (''Orbit'') and launched a second, Libyana, in 2004. Libyana, which offered service at a fraction of al-Madar's rates, quickly became the provider of choice in Libya, now providing an estimated 4 million accounts (91 percent of market share). Cell phone penetration is estimated at 75 percent. GPTC is continuously upgrading its systems and on the lookout for new technology. Additionally, there have been some indications that the government may open up the market for additional cellular service providers.

*Environment:* Water quality in Libya in and around the major population centers is known to be extremely poor, leaving opportunity for U.S. firms in water treatment technologies. Libya's government has expressed increased interest in boosting the country's desalinated water output, and several large projects have been announced as part of Libya's five-year infrastructure development plan. The Renewable Energy and Water Desalination Research Center is currently focusing on desalination units for use in Libya's rural communities not currently serviced by the Great Man Made River Authority. Over 60 percent of medium and large capacity desalination plants currently operating are more than 17 years old. Water, wastewater treatment, and desalinization contracts valued at several hundred million dollars are expected to be awarded over the coming few years. The Great Man Made River project itself may offer opportunities for large contracting firms.

*Safety and Security:* While U.S. firms need to be aware of U.S. Government restrictions on the export of certain security-related products to Libya, opportunities for U.S. suppliers are projected to increase as Libya steps up efforts to improve border control and protection of public and private facilities. There is growing interest in systems for access control, identification, facilities monitoring and management, computer protection, and visual warning and location, among other applications.

*Algeria*

Algeria is the second largest country in Africa in terms of land mass and has the second largest population in the North Africa/Middle East region. Algeria's market of 35 million inhabitants, energy wealth, and growing demands for modern infrastructure have generated interest from governments and private companies around the world. Large oil and natural gas resources and an economy growing at 3–5 percent per year (2008 estimate) have generated almost US$200 billion in foreign exchange reserves—more than any country in the region including the Gulf. In 2008, U.S. exports to Algeria totaled more than US$1.1 billion, and the United States ranks as Algeria's largest bilateral trading partner in the world.

The placement of the first American Commercial Counselor at the U.S. Embassy in 15 years has allowed the USFCS to better support U.S. companies trying to take advantage of commercial opportunities in Algeria. The trade mission offers an opportunity for U.S. business representatives to meet key Algerian business leaders and government decision makers who are hungry for a stronger American private sector role in this country's development, diversification, and economic expansion. U.S. exporters considering this region are advised to gain a foothold in this promising market.

High-level Algerian government officials and business leaders have publicly expressed their desire for greater U.S. business collaboration and involvement in major projects in a variety of sectors.

*Best Prospects*

*Energy:* As one of the top ten producers of oil and natural gas in the world and a member of Organization of Petroleum Exporting Countries (OPEC), Algeria's economy is founded on hydrocarbons. Existing upstream and

midstream infrastructure is aging and inadequate to meet Algeria's near-term production goals. Two new gas pipelines to Europe will be constructed beginning in 2009. The Government of Algeria recently expressed specific interest in involving more U.S. firms in electric power generation projects, renewable energy projects including wind and solar, and modernizing/expansion of mining operations in Algeria. Sonelgaz, Algeria's power generation parastatal, will invest nearly US$30 billion to expand and upgrade power generation and distribution capacity. Of the total investment, US$5 billion will be allocated to generation, US$8 billion to transmission, US$3 billion to gas shipping and more than US$6 billion to distribution. The Government-owned Sonatrach company—also a leading oil consortium—approved a US$45 billion investment plan for 2009–12. The lion's share—US$20 billion—is aimed at developing the Algerian petrochemical industry. The other major areas of investment include US$10 billion for upstream exploration and development, US$6 billion for hydrocarbons transportation facilities programs, and US$1.8 billion for hygiene, safety and environmental protection.

*Infrastructure Projects:* Algeria is now focusing on the development of asphalt bitumen, civil engineering techniques, and technology to construct roads in arid and desert climates. The latter is particularly sought after for the upcoming high plateau East-West Highway project, which includes 23 connector roads. The Ministry has budgeted US$66 billion for these projects expected to be completed through 2013.

*Environmental:* The Algerian Government will spend US$2 billion per year on water and environmental infrastructure for the next five years for five new dams, ten desalination plants, a number of water treatment and reclamation plants, remote sensing and safety systems for Algerian dams, high-profile water transfer projects, and rural irrigation.

*Safety and Security:* The Government is very interested in procuring border surveillance and protection solutions, and critical site security systems for government ministries and the country's hydrocarbon infrastructure. In addition, closed circuit television, tire wreckers, and night vision capabilities are in demand, as are ID card solutions incorporating biometrics.

*Information Technology:* Algerians are increasingly tech-savvy and interested in acquiring expertise in the information and communications technology sector. Government ministries are interested in modernization and digitization of record-keeping. Internet usage, through businesses and Internet cafes, is estimated at over 40 percent. Mobile phones are commonplace, and Algeria is looking toward fourth-generation technology. Mobile phones, accessories, and add-on services, business-to-business information management and strategies, internet connectivity and backbone equipment and services, and global positioning systems technology and services also represent good opportunities for U.S. exporters.

**Mission Goals**

The goal of the trade mission is to provide U.S. participants with first-hand market information, access to government decision makers as appropriate and one-on-one meetings with business contacts, including potential agents, distributors and partners, so they can position themselves to enter or expand their presence in the Libyan and Algerian markets.

*Mission Scenario*

The Trade Mission will include two stops: Tripoli, Libya and Algiers, Algeria. In each city, participants will meet with new business contacts, learn about the markets by participating in Embassy briefings, and explore additional opportunities at networking receptions. Activities will include one-on-one meetings with pre-screened business prospects in both countries. (Note that Saturday and Sunday are part of the regular work week in Algeria.)

PROPOSED TIMETABLE

| | |
|---|---|
| Tuesday, November 3 | Arrive in Libya—optional no-host dinner. |
| Wednesday, November 4 | Orientation and market briefing. Meetings with government and industry officials. |
| Thursday, November 5 | One-on-one business appointments. U.S. Embassy reception. |
| Friday, November 6 | Travel from Tripoli to Algiers. |
| Saturday, November 7 | Orientation and market briefing. Meetings with government and industry officials. U.S. Embassy reception. |
| Sunday, November 8 | One-on-one business appointments—end of mission. |

**Participation Requirements**

All parties interested in participating in the Trade Mission to Libya and Algeria must complete and submit an application package for consideration by the U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 8 and a maximum of 20 companies will be selected to participate in the mission from the applicant pool. U.S. companies already doing business in the target markets as well as U.S. companies seeking to enter these markets for the first time are encouraged to apply.

*Fees and Expenses*

After a company has been selected to participate on the mission, a payment to the U.S. Department of Commerce in the form of a participation fee is required. The participation fee will be $5,850 for a small or medium-sized enterprise (SME) * and $6,900 for large firms. The fee for each additional firm representative (SME or large firm) is $600, with a limit of two representatives per firm. Interpreters are included in the fee. Expenses for travel, lodging, some meals, and incidentals will be the responsibility of each mission participant. Delegation members will be

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (for additional information see *http://www.export.gov/newsletter/march2008/initiatives.html*).

able to take advantage of Embassy rates for hotel rooms.

*Conditions for Participation*

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

*Selection Criteria for Participation*

Selection will be based on the following criteria:

• Suitability of the company's products or services to the Libyan and Algerian markets.

• Applicant's potential for business in Libya and Algeria, including likelihood of exports resulting from the mission.

• Consistency of the applicant's goals and objectives with the stated scope of the mission.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

**Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner, including posting on the U.S. Department of Commerce trade missions calendar—*http://www.ita.doc.gov/doctm/tmcal.html*—and other Internet Web sites, publication in domestic trade publications and association newsletters, direct outreach to the Department's clients and distribution lists, posting in the **Federal Register**, and announcements at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than August 1, 2009. Applications received after August 1, 2009, will be considered only if space and scheduling constraints permit.

**Disclaimer, Security, and Transportation**

Trade mission members participate in the trade mission and undertake related travel at their own risk and are advised to obtain insurance accordingly. Any question regarding insurance coverage must be resolved by the participant and its insurer of choice. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. Companies should consult the State Department's travel warning for Algeria: *http://travel.state.gov/travel/cis_pa_tw/cis/cis_1087.html*. ITA will coordinate with the U.S. Embassy in Algiers to arrange for transportation of the mission participants to and from the airport and hotel. The hotel that will be the primary venue for the mission is a luxury hotel and does have strong security measures in place. Security will be furnished by the U.S. Embassy in Algiers and private hotel security.

The U.S. Government does not make any representations or guarantees as to the commercial success of businesses which participate in this trade mission.

**For More Information and an Application Packet Contact**

Lisa Huot, U.S. Commercial Service, Department of Commerce, Tel: 202–482–2796, Fax: 202–482–9000, e-mail: *northafricamission@mail.doc.gov*.

Dated: March 3, 2009.

**Lisa Huot,**

*CS Trade Mission Program, U.S. Department of Commerce.*

[FR Doc. E9–5275 Filed 3–10–09; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Revised European Port Infrastructure and Security Trade Mission to Germany, Belgium and Italy, May 4–8, 2009

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**Mission Statement**

Revised European Port Infrastructure and Security Trade Mission to Germany, Belgium and Italy, May 4–8, 2009.

**Mission Description**

The United States Department of Commerce's International Trade Administration, U.S. and Foreign Commercial Service, is organizing a Trade Mission to Germany, Belgium and Italy, May 4–8, 2009. This event is intended to tap immediate opportunities in port infrastructure, and security and logistics in Hamburg, Germany; Antwerp, Belgium; and Genoa, Italy. Because these ports are key gateways to the Western European market, companies from countries beyond Germany, Belgium, and Italy will be informed about the mission and encouraged to meet with the U.S. participants.

The program will focus on several major areas, including, but not limited to, the following:

(1) Port safety and security, including container tagging, chemical and radiation detection equipment, electronic container seals, tracking equipment, virtual simulation products and other high-technology security items, and training (such as first responder);

(2) Port logistics and infrastructure, including supply chain, communications, crisis management, risk management products, disaster control shore-based electricity, inland connections, terminal railroad infrastructure, pipelines and other solutions for liquid bulk and petrochemical products;

(3) Port environment, including reduced emissions, clean engine developments and GreenPorts Certification; and

(4) European maritime policies.

The trade mission will expose participating companies to procurement opportunities in maritime ports and showcase U.S. technology, which is highly regarded and maintains a competitive edge in Europe.

**Commercial Setting**

As in other markets, Europe places a strong emphasis on homeland security, transportation, environmental safety and critical infrastructure development. The need for information exchange and security concerning the maritime industry continues to create opportunities in the maritime sector in Europe. Approximately 90 percent of the transport of goods to and from the European Union is by sea. The European Union has adopted rules regarding maritime safety and security to ensure quality shipping that respects the environment and guarantees an optimal level of protection. The current European maritime transport policy calls for safety and security measures that will allow the European maritime industry to continue making the most of its already prominent role to maximize

its competitive position. The major focus is on environmental impact, safety, unification and simplification of procedures. This scenario will provide excellent opportunities for U.S. companies operating in a variety of areas.

End-users consider the U.S. security equipment industry to be a leader in the global marketplace. U.S. producers will continue to have a competitive advantage because of their know-how and technological edge. Solutions to be considered will include, among many other items, handheld scanners, pagers, portal monitors, radiation identification devices, cargo and baggage screening equipment, non-intrusive inspection technology, access control and identification systems, video surveillance equipment and communication software for data integration.

In European ports, a strong demand is developing for emissions-reducing technologies. This demand is triggered mainly by European Union legislation pushing for important reductions in gaseous emissions, especially greenhouse gases, CO, $NO_X$ and $SO_x$. The underlying political drivers are the EU's commitment to the Kyoto Protocol and its Clean Air For Europe (CAFE) program. As EU Member states have some freedom in the actual implementation of the EU legislation, and they will likely pass on the burden to execute the national emission-reduction targets to the port areas, which are notorious polluters. Key commercial leads will include any and all technologies that lead to higher energy efficiency of both onshore (port facilities and infrastructure) and offshore (vessels) equipment. Examples are shore-based electricity networks (''cold ironing''), exhaust filters for diesel engines and power plants, and low-sulfur fuels. As the legislative process is ongoing, companies interested in this area could benefit from developing relations with port authorities and other semi-public stakeholders as direct sources of information in the future.

**Mission Goals**

The trade mission's goal is to introduce U.S. exporters of port-related equipment, systems, and services to potential public and private end-users and partners, including potential agents, distributors, and licensees, with the aim of creating business partnerships that will contribute to increasing U.S. exports to European markets.

**Mission Scenario**

The mission will include meetings with individuals from both the public sector (e.g., port authorities and customs officials) and private business (e.g., shipping agents, marine terminal operators, and local security systems companies). In each country, participants will receive a briefing that will include market intelligence, as well as an overview of the country's economic and political environment. A networking reception is planned at each stop. The mission will also include a brief tour of the ports of Hamburg, Antwerp and Genoa, briefings by port authorities on planned projects and expected infrastructure and security needs, and one-on-one business meetings between U.S. participants and potential end-users and partners. Follow-on business meetings in other countries in the region can be set up before or after the trade mission for an additional price, depending on participants' wishes.

**Proposed Timetable**

The proposed schedule allows for about a day and a half in each port area. Efforts will be made to accommodate participating companies with particular interests that require individual schedules within one stop.

| | |
|---|---|
| Sunday, May 3, through Tuesday, May 5, 2009. | Mission begins in Hamburg, Germany.<br><br>Welcome briefing.<br>Business matchmaking: 1 full day of appointments.<br>Tour of port.<br>Networking reception.<br>Participants will depart Hamburg the morning of Tuesday, May 5, by air, and proceed to Brussels, Belgium. |
| Tuesday, May 5, through Thursday, May 7. | Mission's second stop: Antwerp, Belgium (via mini-bus from Brussels).<br><br>Welcome briefing.<br>Tour of port.<br>Networking reception.<br>Business matchmaking: 1 full day of appointments.<br>The delegation will depart Belgium via Brussels the morning of May 7 and proceed to Milan, Italy. |
| Thursday, May 7, through Friday, May 8. | Mission's third and last stop: Genoa, Italy.<br><br>Welcome briefing.<br>Business matchmaking: 1 full day of appointments.<br>Tour of port.<br>Networking reception.<br>Participants are free to depart for their home destinations on the evening of May 8. |

**Criteria for Participation and Selection**

A minimum of 8 and a maximum of 15 companies will be selected to participate in the mission from the applicant pool. The target participants will include U.S. companies specializing in security, infrastructure, environmental protection, and communications systems. As large European ports attract all sorts of industries, U.S. applicants with business interests in other sectors will also be considered.

*Fees and Expenses*

After a company has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee is $3,000 per company for small or medium enterprises (SME *) and $3,700 per

* An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (see *http://www.sba.gov/services/contracting opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008 (see *http://*

company for large firms. The fee for each additional firm representative (large firm or SME) is $500 per person. Expenses for lodging, most transportation (except, for example, bus transportation to Antwerp, Belgium), most meals, and incidentals will be the responsibility of each mission participant.

*Conditions for Participation*

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.
- Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product or service.

*Selection Criteria for Participation*

- Suitability of the company's products or services to the target sectors and markets;
- Applicant's potential for business in the target markets, including likelihood of exports resulting from the mission; and
- Relevance of the company's business line to the mission's goals.

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

**Timeframe for Recruitment and Applications**

Mission recruitment will be conducted in an open and public manner. Outreach will include posting on the Commerce Department trade mission calendar *http://www.ita.doc.gov/doctm/tmcal.html* and other Internet Web sites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. The U.S. Commercial Service offices in Italy, Germany and Belgium, in cooperation with port area U.S. Export Assistance Centers and the Global Safety and Security, Environmental, and Europe Teams will lead recruitment activities.

The mission will open on a first come first served basis. Recruitment will begin immediately and close March 23, 2009. Applications received after March 23, 2009, will be considered only if space and scheduling constraints permit. Interested U.S. firms may contact the mission project officer listed below or visit the mission Web site: *http://www.buyusa.gov/europe/security_events.html#_section2*.

*Contacts*

Greg Thompson, Senior International Trade Specialist, e-mail: *greg.thompson@mail.doc.gov*, U.S. Commercial Service, North Texas USEAC, Tel: 214–712–1932, Fax: 214–746–6799.

Maria Calabria, Commercial Specialist, e-mail: *maria.calabria@mail.doc.gov*, U.S. Commercial Service Italy, Via Vittorio Veneto 119/A, 00187 Rome, Italy, Tel: 011–39–06 4674 2427/2382, Fax: 011–39–06 4674 2113.

Dated: March 6, 2009.

**Greg Thompson,**

*Senior International Trade Specialist, U.S. Commercial Service, North Texas USEAC.*

[FR Doc. E9–5294 Filed 3–10–09; 8:45 am]

**BILLING CODE 3510–DS–P**

*www.export.gov/newsletter/march2008/initiatives.html* for additional information).

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Notice of Inventions Available for Licensing

**AGENCY:** National Institute of Standards and Technology, Commerce.

**ACTION:** Notice of inventions available for licensing.

**SUMMARY:** The inventions listed below are owned in whole or in part by the U.S. Government, as represented by the Secretary of Commerce. The U.S. Government's interest in these inventions is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of Federally funded research and development.

**FOR FURTHER INFORMATION CONTACT:** Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 222, Room A240, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, fax 301–975–3482, or e-mail: *mary.clague@nist.gov*. Any request for information should include the NIST Docket number and title for the invention as indicated below.

**SUPPLEMENTARY INFORMATION:** NIST may enter into a Cooperative Research and Development Agreement (''CRADA'') with the licensee to perform further research on the invention for purposes of commercialization. The inventions available for licensing are:

*NIST Docket Number:* 08–008.

*Title:* Solution-Processed Flexible Titanium Dioxide Memory Devices.

*Abstract:* The invention provides a method of processing a nonvolatile memory device includes forming a first electrode, depositing a layer of sol-gel solution on the first electrode, hydrolyzing the layer of sol-gel solution to form a layer of variable electric resistance material, and forming a second electrode on the layer of variable electric resistance material.

*NIST Docket Number:* 08–012.

*Title:* Low Cost Multi-Channel Data Acquisition Systems.

*Abstract:* This invention is jointly owned by the Department of Commerce and the University of Maryland. Embodiments of the invention provide an inexpensive and fast pulse characterization platform capable of real time operation, suitable for acquisition of single-photon data. Embodiments include both a digital multi-channel data acquisition instrument and an analog pulse acquisition instrument suitable for a wide range of applications in physics laboratories. A Field Programmable Gate Array (FPGA) performs multi-channel acquisition in real time, time stamps single events, and determines if the events fit a predetermined signature, which causes the events to be categorized as a coincidence. The indications of coincidences are then communicated to a host computer for further processing as desired.

*NIST Docket Number:* 08–015.

*Title:* A Mechanism for the Specification and Enforcement of Arbitrary Attribute-Based Access Control Policies.

*Abstract:* Protection of enterprise resources in today's access control paradigm requires the deployment of a multitude of access control mechanisms implemented at both the operating system and application levels. These mechanisms come in a wide variety of forms each with their individual

methods for authenticating users, configuring security policies, computing access control decisions, and enforcing these policies. A characteristic of dispersed heterogeneous access control mechanisms is a lack of interoperability that consequently results in a host of identity and privilege management issues. However, solving the interoperability problem alone is not sufficient in curing the problems of the existing access control paradigm. While there exists a diverse set of known access control policies, only a small subset of these policies is enforceable through existing mechanisms. In addition, policies independently implemented within applications can easily undermine one another as well as those implemented at the operating system level. To streamline identity and privilege management operations and provide comprehensive and flexible security policy enforcement, a standards-driven framework, called the Policy Machine, for the specification and enforcement of access control that can be adopted by future versions of operating systems and serve as a basis for the development of truly secure applications has been developed.

Dated: March 4, 2009.

**Patrick Gallagher,**

*Deputy Director.*

[FR Doc. E9–5069 Filed 3–10–09; 8:45 am]

**BILLING CODE 3510–13–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XN94**

### New England Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Monkfish Oversight Committee, on March 31, 2009, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This meeting will be held on Tuesday, March 31, 2009, at 9 a.m.

**ADDRESSES:** The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

*Council address*: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

**SUPPLEMENTARY INFORMATION:** The Monkfish Committee will review the New England Fishery Management Council's Science and Statistical (SSC) report on the process to be used to set Acceptable Biological Catch (ABC), Annual Catch Limits (ACLs), Accountability Measures (AMs), and other management reference points. The Committee will also review the comments submitted by the public during the scoping period for Amendment 5 to the Monkfish Fishery Management Plan (FMP). This meeting is the first on Amendment 5, and as such, the Committee will provide specificity and direction to the Monkfish Plan Development Team (PDT) on the reference points and management measures the PDT should start analyzing and developing. The Committee will meet again, as will the Industry Advisory Panel, prior to the June 2009 Council meeting to formulate its recommendations on the range of alternatives and reference points to be considered and developed in the Amendment 5 Draft Environmental Impact Statement.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 5, 2009.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E9–5084 Filed 3–10–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XN97**

### North Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings, in Anchorage, AK.

**DATES:** The meetings will be held March 30, 2009 through April 7, 2009. See **SUPPLEMENTARY INFORMATION** for specific dates and times. All meetings are open to the public, except executive sessions.

**ADDRESSES:** The meetings will be held at the Anchorage Hilton Hotel, 500 W 3rd Avenue, Anchorage, AK.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** David Witherell, Council staff, Phone: 907–271–2809.

**SUPPLEMENTARY INFORMATION:** The Council will begin its plenary session at 8 a.m. on Wednesday April 1 continuing through Tuesday April 7, 2009. The Council's Advisory Panel (AP) will begin at 8 a.m., Monday, March 30 and continue through Saturday April 4. The Scientific and Statistical Committee (SSC) will begin at 8 a.m. on Monday, March 30 and continue through Wednesday April 1, 2009. The Enforcement Committee will meet Tuesday, March 31, from 9 a.m. to 12 p.m. in the Illiamna Room.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports

Executive Director's Report (including review of Statement of Organization, Practices and Procedures (SOPPs))

NMFS Management Report

Alaska Department of Fish & Game Report

U.S. Coast Guard Report

U.S. Fish & Wildlife Service Report

Protected Species Report (Including update on Steller Sea Lion Biological Opinion)

2. Gulf of Alaska (GOA) Groundfish Management: Final action on GOA Fixed Gear Recency.

3. Salmon Bycatch: Final action on Bering Sea Chinook Salmon Bycatch Environmental Impact Statement (EIS).

4. Groundfish Issues: Review discussion paper on proposed Bristol Bay Trawl Closure and Walrus issues, and receive Council direction; Review discussion paper on GOA Tanner and Chinook Bycatch and receive Council direction.

5. Amendment 80 Cooperatives: Review annual report from cooperative; Final action on Amendment 80 Cooperative Formation criteria.

6. Marine Protection Act Nomination Process: Review NMFS letter and discuss next steps. (T)

7. Other Groundfish Issues: Review and approve halibut sorting Exempted Fishery Permit (T); Review Habitat Area of Particular Concern (HAPC) evaluation criteria and Essential Fish Habitat (EFH) 5-year review methodology (SSC Only).

8. Scallop Issues: Receive Plan Team Report and review and approve Stock Assessment Fishery Evaluation (SAFE) Report.

9. Staff Tasking: Review Committees and tasking.

10. Other Business

The SSC agenda will include the following issues:

1, Salmon Bycatch

2. Halibut Sorting EFP

3. HAPC evaluation criteria and EFH 5 year review methodology

4. Scallop Issues

The Advisory Panel will address most of the same agenda issues as the Council, except for 11 reports. The Agenda is subject to change, and the latest version will be posted at *http://www.fakr.noaa.gov/npfmc/*.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: March 5, 2009.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E9–5085 Filed 3–10–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN: 0648–XN98**

### North Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of a public meeting of the North Pacific Fishery Management Council's Pacific Northwest Crab Industry Advisory Committee (PNCIAC).

**SUMMARY:** The PNCIAC will meet in Seattle, WA. The meeting is open to the public.

**DATES:** The meeting will be held on Monday, March 23, 2009, from 9 a.m. to 1 p.m.

**ADDRESSES:** The meeting will be held at the Leif Erikson Hall, 2247 NW 57th Street, Suite 403, Seattle, WA 98107 (in Ballard); telephone: (206) 769–3474.

*Council address*: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Dr. Diana Stram, Council Staff; telephone: (907) 271–2809.

**SUPPLEMENTARY INFORMATION:** The PNCIAC will review the Economic Data Reports: Review Alaska Fishery Science Center draft metadata and continue work on revisions of EDR forms; and discuss of Marine Stewartship Council/sustainable fisheries certification issues and take action as needed.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meeting. Actions will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under Section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: March 5, 2009.

**Tracey L. Thompson,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E9–5104 Filed 3–10–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648–XN87**

### Taking and Importing Marine Mammals; Navy Training and Research, Development, Testing, and Evaluation Activities Conducted within the Northwest Training Range Complex

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; receipt of application for letter of authorization; request for comments and information.

**SUMMARY:** NMFS has received a request from the U.S. Navy (Navy) for authorization to take marine mammals incidental to military readiness training activities and research, development, testing and evaluation (RDT&E) to be conducted in the Northwest Training Range Complex (NWTRC) for the period beginning September 2009 and ending September 2014. Pursuant to the implementing regulations of the Marine Mammal Protection Act (MMPA), NMFS is announcing our receipt of the Navy's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on the Navy's application and request.

**DATES:** Comments and information must be received no later than April 10, 2009.

**ADDRESSES:** Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.0648–XN87@noaa.gov*. NMFS is not responsible for e-mail comments sent to

addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

**FOR FURTHER INFORMATION CONTACT:** Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext. 166.

**SUPPLEMENTARY INFORMATION:**

**Availability**

A copy of the Navy's application may be obtained by writing to the address specified above

(See **ADDRESSES**), telephoning the contact listed above (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. The Navy's Draft Environmental Impact Statement (DEIS) for NWTRC was made available to the public on December 26, 2008, and may be viewed at *http://www.nwtrangecomplexeis.com/*. During the initial 45–day public comment period, the Navy hosted five public hearings. The comment period was subsequently extended 30 days and another public hearing was held at an additional location.

**Background**

In the case of military readiness activities, sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) if certain findings are made and regulations are issued or, if the taking is limited to harassment, notice of a proposed authorization is provided to the public for review.

Authorization for incidental takings may be granted if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

With respect to military readiness activities, the MMPA defines ''harassment'' as:

(i) any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

**Summary of Request**

In September, 2008, NMFS received an application from the Navy requesting authorization to take individuals of 32 species of marine mammals (4 pinniped and 28 cetacean) incidental to upcoming training and RDT&E activities to be conducted in the NWTRC (off the coasts of Washington, Oregon, and northern California) over the course of 5 years. These training and RDT&E activities are classified as military readiness activities. The Navy states that these training activities may expose some of the marine mammals present in the area to sound from various mid-frequency and high-frequency active tactical sonar sources or to pressure from underwater detonations. The Navy requests authorization to take individuals of 32 species of marine mammals by Level B Harassment.

**Specified Activities**

In the application submitted to NMFS, the Navy requests authorization to take marine mammals incidental to conducting training events and RDT&E utilizing mid- and high frequency active sonar sources and explosive detonations. These sonar and explosive sources will be utilized during Anti-submarine Warfare (ASW) Tracking Exercises, Mine Avoidance Training, Extended Echo Ranging and Improved Extended Echo Ranging (EER/IEER) events, Missile Exercises, Gunnery Exercises, Bombing Exercises, Sinking Exercises, and Mine Warfare Training. Table 1–1 in the application lists the activity types, the equipment and platforms involved, and the duration and potential locations of the activities.

**Information Solicited**

Interested persons may submit information, suggestions, and comments concerning the Navy's request (see **ADDRESSES**). All information, suggestions, and comments related to the Navy's NWTRC request and NMFS' potential development and implementation of regulations governing the incidental taking of marine mammals by the Navy's NWTRC activities will be considered by NMFS in developing, if appropriate, the most effective regulations governing the issuance of letters of authorization.

Dated: March 6, 2009.

**P. Michael Payne,**

*Chief, Division of Permits, Conservation, and Education, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. E9–5287 Filed 3–10–09; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before May 11, 2009.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be

collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 6, 2009.

**Stephanie Valentine,**

*Acting Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.*

**Federal Student Aid**

*Type of Review:* Revision.
*Title:* William D. Ford Federal Direct Loan (Direct Loan) Program: Alternative Documentation of Income.
*Frequency:* On Occasion.
*Affected Public:* Individuals or household.
*Reporting and Recordkeeping Hour Burden:*
*Responses:* 405,577.
*Burden Hours:* 81,115.

*Abstract:* This form serves as the means by which a borrower who is repaying Direct Loan Program loans under the Income-Contingent Repayment (ICR) Plan or the Income-Based Repayment (IBR) Plan grants permission for the Internal Revenue Service (IRS) to provide the U.S. Department of Education (the Department) with a borrower's tax return information so that the Department can determine borrower eligibility and monthly loan payment amount for the ICR and IBR Plans. Under Direct Loan Program regulations, a borrower's tax information is used to calculate the monthly loan payment amount under the ICR and IBR plans.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3977. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–5297 Filed 3–10–09; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before May 11, 2009.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 6, 2009.

**Stephanie Valentine,**

*Acting Director, Information Collections Clearance Division, Regulatory Information Management Services, Office of Management.*

**Federal Student Aid**

*Type of Review:* Revision.
*Title:* Fiscal Operations Report for 2008–2009 and Application to Participate for 2010–2011 (FISAP) and Reallocation Form E40–4P.
*Frequency:* Annually.
*Affected Public:* Businesses or other for-profit; Federal Government; Not-for-profit institutions.
*Reporting and Recordkeeping Hour Burden:*
Responses: 5,798.
Burden Hours: 32,693.

*Abstract:* This application data will be used to compute the amount of funds needed by each school for the 2010–2011 award year. The Fiscal Operations Report data will be used to assess program effectiveness, account for funds expended during the 2008–2009 award year, and as part of the school funding process. The Reallocation form is part of the FISAP on the Web. Schools will use it in the summer to return unexpended funds for 2008–2009 and request supplemental FWS funds for 2009–2010.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3962. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–5300 Filed 3–10–09; 8:45 am]

**BILLING CODE 4000–01–P**

## ELECTION ASSISTANCE COMMISSION

### Sunshine Act Notice

**AGENCY:** U.S. Election Assistance Commission.

**ACTION:** Notice of public meeting and hearing agenda (amended).

**DATE AND TIME:** Tuesday, March 17, 2009, 11 a.m.–12 p.m. EST (Meeting), 1–3 p.m. EST (Hearing).

**PLACE:** U.S. Election Assistance Commission, 1225 New York Ave., NW., Suite 150, Washington, DC 20005 (*Metro Stop:* Metro Center).

**AGENDA:** The Commission will hold a public meeting to consider administrative matters. The Commission will conduct a public hearing to receive presentations on the following topic: Voter Registration Databases: Initial Discussion on Reviewing HAVA Mandated Guidance. Members of the public may submit written testimony regarding HAVA mandated guidance on voter registration databases via e-mail at *testimony@eac.gov*, or via mail addressed to the U.S. Election Assistance Commission 1225 New York Ave., NW., Suite 1100, Washington, DC 20005, or by fax at 202–566–3127. Written testimony must be received by 5 p.m. EST on Monday, March 16, 2009. All testimony should have the heading ''Testimony on voter registration databases'' in the subject/attention line. Members of the public may observe but not participate in EAC meetings unless this notice provides otherwise. Members of the public may use small electronic audio recording devices to record the proceedings. The use of other recording equipment and cameras requires advance notice to and coordination with the Commission's Communications Office.*

* View *EAC Regulations Implementing Government in the Sunshine Act.*

This meeting and hearing will be open to the public.

**PERSON TO CONTACT FOR INFORMATION:** Bryan Whitener, Telephone: (202) 566–3100.

**Thomas R. Wilkey,**

*Executive Director, U.S. Election Assistance Commission.*

[FR Doc. E9–5363 Filed 3–9–09; 4:15 pm]

**BILLING CODE 6820–KF–P**

## DEPARTMENT OF ENERGY

**[OE Docket No. EA–343]**

### Application to Export Electric Energy; Midwest Independent Transmission System Operator, Inc.

**AGENCY:** Office of Electricity Delivery and Energy Reliability, DOE.

**ACTION:** Notice of application.

**SUMMARY:** The Midwest Independent Transmission System Operator, Inc. (Midwest ISO) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests, or requests to intervene must be submitted on or before April 10, 2009.

**ADDRESSES:** Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, 20585–0350 (Fax 202–586–8008).

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On July 11, 2008, DOE received an application from Midwest ISO for authority to transmit electric energy from the United States to Canada. Midwest ISO does not own or operate electric generation, transmission or distribution facilities nor does it have a franchised electric power service territory. Midwest ISO is a not-for-profit, non-stock corporation, a ''public utility'' under Part II of the FPA, and a ''Regional Transmission Organization'' (RTO) approved by the Federal Energy Regulatory Commission (FERC) under Order No. 2000, 18 CFR 35.34 *et seq.*

As an RTO, Midwest ISO has authority (referred to as ''functional control'') to direct the use of transmission facilities owned, operated, and maintained by transmission owning members of Midwest ISO for the purpose of providing open access non-discriminatory transmission service. In addition, Midwest ISO has administered day-ahead and real-time energy markets with financial transmission rights since April 2005. In its application, Midwest ISO indicated that beginning September 9, 2008 (this was later changed to January 6, 2009) it would administer a market for operating reserves under its Energy and Operating Reserves Markets Tariff (Tariff). In so doing, Midwest ISO became a Balancing Authority registered with the North American Electric Reliability Corporation (NERC) and is responsible for meeting NERC reliability standards applicable to Balancing Authorities, including the requirement to enter into agreements with neighboring Balancing Authorities for coordination and emergency assistance. These agreements may require Midwest ISO to exchange emergency energy with Canadian counterparties, including Manitoba Hydro and the Independent Electric System Operator (IESO).

Prior to Midwest ISO's commencing to administer the market for operating reserves, emergency energy had been transmitted into Canada from the Midwest ISO region by one or more Balancing Authorities or Market Participants operating under the Midwest ISO Tariff, pursuant to bilateral agreements between the buyer and seller and pursuant to the terms and conditions of various export authorizations issued by DOE, using international transmission facilities authorized by Presidential permits. Not all of the international transmission facilities at the Canadian border subject to Presidential permits have been transferred to the functional control of Midwest ISO by their owners. Such facilities are not subject to the authority of Midwest ISO as an RTO. However, Midwest ISO, in its capacity as Reliability Coordinator, has the authority to direct actions necessary to preserve the safety and reliability of the Eastern Interconnection, which includes Manitoba Hydro and IESO. To the extent such direction affects such international transmission facilities, it takes into account, and is subject to, the conditions of the applicable Presidential permit.

Effective January 6, 2009, Midwest ISO will be the responsible Balancing Authority for implementing the payback of unscheduled energy flows to the Eastern Interconnection. Unscheduled, or ''inadvertent,'' energy is the difference between the actual metered energy interchange and the scheduled energy interchange between two adjacent Balancing Authority Areas (previously called ''control areas''). Consequently, Midwest ISO may from time to time initiate unilateral payback of unscheduled energy resulting in energy flows across border facilities with the Canadian Balancing Authorities, or Midwest ISO may enter a bilateral schedule for energy exports directly to Manitoba Hydro or the IESO to affect the payback of unscheduled energy to those entities.

Midwest ISO does not take title to electric energy in its market, or to energy transmitted out of its market, including electric energy exported to Canada. Even pursuant to its role as a

Balancing Authority, Midwest ISO will not take title to electric energy under any circumstances, but will buy or sell such energy ''for and on behalf of'' its Market Participants (as defined in the Midwest ISO Tariff) and will distribute revenues or collect the costs of such energy as set forth in the Tariff.

In addition, in operating as a Balancing Authority, Midwest ISO will be a member of a contingency reserve sharing group that includes Manitoba Hydro and proposes to export emergency energy to Manitoba Hydro under the terms of the contingency reserve sharing agreement.

Traditionally, DOE has required that the last entity to hold title to the electricity inside the U.S. obtain export authority. The rationale being that such an entity could affect the transfer and, therefore, impact the operational reliability of the system. Although Midwest ISO is not the title holder of the electricity bring exported, DOE believes that as a Balancing Authority, Midwest ISO occupies the position of affecting the export and as an RTO, has the legal responsibility for the reliable operation of the electric system.

Based on the above, DOE believes that Midwest ISO must obtain authorization to export electricity under section 202(e) of the FPA. However, because of the fairly recent introduction of different types of entities, like RTOs, ISOs, Balancing Authorities, and similarly situated entities, each of whom may affect the transmission of electric energy from the United States to a foreign country and be responsible for the reliable operation of the electric system, DOE is inviting comments on the appropriateness of issuing export authorizations to entities like Midwest ISO. For the time being, DOE will address the question of whether a particular entity needs an export authorization on a case-by-case basis. DOE intends to initiate a proceeding in the near future to explore the more general question of what types of entities need an electricity export authorization from DOE. In that proceeding, DOE will be looking for ways to reduce the administrative burden on entities engaged in the international electricity market, while continuing to satisfy our statutory obligations.

The electric energy which Midwest ISO proposes to export to Canada would be transmitted over the international transmission facilities owned by International Transmission Co., Minnesota Power, Inc., Minnkota Power Cooperative, Inc., and Northern States Power Company/Xcel.The construction, operation, maintenance, and connection of each of these international transmission facilities to be utilized by Midwest ISO has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

On December 22, 2008, Midwest ISO submitted an application for emergency temporary authorization to export electric energy to Canada in this docket, asserting that FERC had issued a final order on December 18, 2008, authorizing Midwest ISO to begin operating its Ancillary Services Market on January 6, 2009. The application requested that DOE issue an emergency temporary export authorization pending completion of this proceeding. On December 24, 2008, DOE granted Midwest ISO the temporary authority to export electric energy to Canada beginning January 6, 2009 as requested, until final resolution of the matter in this proceeding.

*Procedural Matters:* Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Midwest ISO application to export electric energy to Canada should be clearly marked with Docket No. EA–343. Additional copies are to be filed directly with Gregory A. Troxell, Assistant General Counsel, Midwest ISO, P.O. Box 4202, Carmel, Indiana 46082–4202. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm*, or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on March 4, 2009.

**Anthony J. Como,**

*Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.*

[FR Doc. E9–5167 Filed 3–10–09; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Biomass Research and Development Technical Advisory Committee

**AGENCY:** Department of Energy, Office of Energy Efficiency and Renewable Energy.

**ACTION:** Notice of open teleconference meeting.

**SUMMARY:** This notice announces an open teleconference meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

**DATES:** March 19, 2009 at 11 a.m.–12 p.m. EST.

**ADDRESSES:** Meeting will be conducted via conference call. Call-in information can be obtained by contacting T.J. Heibel at (410) 997–7778 ext. 223; e-mail: *theibel@bcs-hq.com.*

**FOR FURTHER INFORMATION CONTACT:** Valri Lightner, Designated Federal Official for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–0937 or T.J. Heibel at (410) 997–7778 ext. 223; e-mail: *theibel@bcs-hq.com*

**SUPPLEMENTARY INFORMATION:**

*Purpose of Meeting:* To provide advice and guidance that promotes research and development leading to the production of biobased fuels and biobased products.

*Tentative Agenda:* Agenda will include the following:

- Feedstock Subcommittee Report Out.

*Public Participation:* In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral statements regarding any of the items on the agenda, you should contact Valri Lightner at 202–586–0937; e-mail:

*valri.lightner@ee.doe.gov* or T.J. Heibel at (410) 997–7778 ext. 223; e-mail: *theibel@bcs-hq.com* You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues.

*Minutes:* The minutes of the meeting will be available for public review and copying at *http://www.brdisolutions.com/publications/default.aspx#meetings.*

Issued at Washington, DC on March 4, 2009.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. E9–5074 Filed 3–10–09; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 13348–000]**

### Buckeye Water Conservation and Drainage District; Notice of Conduit Exemption Application Accepted for Filing and Soliciting Comment, Motions To Intervene, and Competing Applications

March 4, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for Exemption for Small Conduit Facility.

b. *Project No:* 13348–000.

c. *Date Filed:* December 19, 2008.

d. *Applicant:* Buckeye Water Conservation and Drainage District.

e. *Name of Project:* South Extension Canal Project.

f. *Location:* The project is located near the town of Buckeye in Maricopa County, Arizona.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* Mr. Ed Gerak, General Manager, Buckeye Water Conservation and Drainage District, P.O. Box 1726, Buckeye, AZ 85326, (623) 386–2196.

i. *FERC Contact:* Anthony DeLuca, (202) 502–6632

j. Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 45 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13348) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

k. *Description of Request:* Buckeye Water Conservation and Drainage District (BWCDD) requests Commission approval for exemption for small conduit hydroelectric facility. This proposal consists of adding a steel tube penstock, one Schneider Linear Hydroengine (SLH), and a draft tube to a recently improved impoundment structure located on a BWCDD canal known as the South Extension Canal (SEC). The canal is operated for the distribution of water for agricultural purposes and there are no consumptive water supply facilities associated with the SEC project. The hydraulic capacity of the plant will be 0.52 cubic meters per second (18.4 cubic feet per second) and SLH will have an estimated average annual generation of 32,000 kWh.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–5251 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER09–747–000]**

### Robbins Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

March 3, 2009.

This is a supplemental notice in the above-referenced proceeding, of Robbins Energy LLC's application for market-based rate authority, with an accompanying rate schedule, 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 March 23, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) 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. E9–5228 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

March 4, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP06–540–007.

*Applicants:* High Island Offshore System, L.L.C.

*Description:* Second annual report of non-routine expenditures pursuant to its O&M Agreement for calendar year 2008 of High Island Offshore System, L.L.C.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090302–5186.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 16, 2009.

*Docket Numbers:* RP09–400–000.

*Applicants:* Cheniere Creole Trail Pipeline, L.P.

*Description:* Cheniere Creole Trail Pipeline, LP submits FERC Gas Tariff, Original Volume No. 1.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090302–0425.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–401–000.

*Applicants:* Williston Basin Interstate Pipeline Co.

*Description:* Williston Basin Interstate Pipeline Co. submits its Annual Fuel and Electric Power Reimbursement Adjustment.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090302–0424.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–402–000.

*Applicants:* Transcontinental Gas Pipe Line Company.

*Description:* Transcontinental Gas Pipe Line Co, LLC submits First Revised Sheet No. 28 et al. to FERC Gas Tariff, Fourth Revised Volume No. 1.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090302–0426.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–403–000.

*Applicants:* Florida Gas Transmission Company, LLC.

*Description:* Florida Gas Transmission Company, LLC submits Fifteenth Revised Sheet No. 7 et al. to FERC Gas Tariff, Fourth Revised Volume No. 1.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090302–0423.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–404–000.

*Applicants:* Equitrans, L.P., Description: Equitrans, LP submits Twenty Third Revised Sheet No. 5 et al. to FERC Gas Tariff, Original Volume No. 1.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090302–0422.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–405–000.

*Applicants:* Texas Gas Transmission, LLC.

*Description:* Texas Gas Transmission, LLC submits Second Revised Sheet No. 36 et al. to FERC Gas Tariff, Third Revised Volume No. 1.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090302–0421.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–407–000.

*Applicants:* KO Transmission Company.

*Description:* KO Transmission Co submits Twenty-fifth Revised Sheet No. 10 to FERC Gas Tariff, Original Volume No. 1.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090302–0416.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–408–000.

*Applicants:* Dominion Cove Point LNG, LP,

*Description:* Dominion Cove Point LNG, LP submits Twelfth Revised Sheet No. 11 et al. to FERC Gas Tariff, Original Volume No. 1.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090302–0417.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–411–000.

*Applicants:* Energy West Development, Inc.

*Description:* Energy West Development, Inc submits a report relating to its L&U Percentage, Inc for the period commencing 4/1/09.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090302–0420.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–423–000.

*Applicants:* Columbia Gulf Transmission Company.

*Description:* Columbia Gulf Transmission Company submits Forty Eighth Revised Sheet No. 18 et al. to FERC Gas Tariff, Second Revised Volume No 1.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303–0199.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–424–000.

*Applicants:* National Fuel Gas Supply Corporation.

*Description:* National Fuel Gas Supply Corporation submits One hundred Twenty Fifth Revised Sheet No. 9 to its FERC Gas Tariff fourth Revised Volume No 1.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303–0198.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–425–000.

*Applicants:* Dominion Transmission, Inc.

*Description:* Dominion Transmission, Inc submits First Revised Sheet No. 41 to FERC Gas Tariff, Third Revised Volume No 1.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303–0197.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–426–000.

*Applicants:* Egan Hub Storage, LLC.

*Description:* Egan Hub Storage, LLC submits Second Revised Sheet No 17 et al. to FERC Gas Tariff, First Revised Volume No 1.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090303–0200.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 16, 2009.

*Docket Numbers:* RP09–428–000.

*Applicants:* ANR Pipeline Company.

*Description:* ANR Pipeline Company submits First Revised Sheet 10A et al. to FERC Gas Tariff, Second Revised Volume 1, to be effective 4/1/09.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090303–0252.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–430–000.

*Applicants:* Empire Pipeline, Inc.

*Description:* Annual Report of Empire Pipeline, Inc. pursuant to Section 23.5 of its FERC Gas Tariff re: Compressor Fuel Factors and Other Gas for Transporter's use.

*Filed Date:* 03/02/2009.

*Accession Number:* 20090302–5202.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 16, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a

compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E9–5147 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings

March 3, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP96–359–039.

*Applicants:* Transcontinental Gas Pipe Line Corp.

*Description:* Transcontinental Gas Pipe Line Co, LLC submits two executed service agreements containing negotiated rates, and one executed amendment to a service agreement containing a negotiated rate under Rate Schedule FT etc.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090227–0095.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 10, 2009.

*Docket Numbers:* RP99–301–231.

*Applicants:* ANR Pipeline Company.

*Description:* ANR Pipeline Company submits an amendment to one Rate Schedule NNS negotiated rate agreement and one Rate Schedule ETS agreement etc.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090227–0099.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 10, 2009.

*Docket Numbers:* RP99–301–232.

*Applicants:* ANR Pipeline Company.

*Description:* ANR Pipeline Co submits Rate Schedule FTS–1 negotiated rate service agreement with Integrys Energy Service, Inc.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090227–0098.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 10, 2009.

*Docket Numbers:* RP99–301–233.

*Applicants:* ANR Pipeline Company.

*Description:* ANR Pipeline Company submits for filing and acceptance an amendment to one Rate Schedule FTS–1 negotiated rate agreement with Integrys Energy Services, Inc.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090227–0097.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 10, 2009.

*Docket Numbers:* RP09–337–001.

*Applicants:* Eastern Shore Natural Gas Company.

*Description:* Eastern Shore Natural Gas Company submits Twenty-Third Revised Sheet 4 *et al.* to FERC Gas Tariff, Second Revised Volume 1, to be effective 3/1/09.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090227–0094.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 10, 2009.

*Docket Numbers:* RP09–356–001.

*Applicants:* Williston Basin Interstate Pipeline Co.

*Description:* Williston Basin Interstate Pipeline Company request to amend their 2/10/09 filing of First Revised Sheet 227A.02 *et al.* to FERC Gas Tariff, Second Revised Volume 1.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090227–0096.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 10, 2009.

*Docket Numbers:* RP09–395–000.

*Applicants:* Guardian Pipeline, L.L.C.

*Description:* Guardian Pipeline, LLC submits Nineteenth Revised Sheet 5 *et al.* to its FERC Gas Tariff, Original Volume 1, to be effective 4/1/09.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090227–0134.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 10, 2009.

*Docket Numbers:* RP09–396–000.

*Applicants:* Northwest Pipeline GP.

*Description:* Northwest Pipeline GP submits Third Revised Sheet 14 to its FERC Gas Tariff, Fourth Revised Volume 1.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090227–0135.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 10, 2009.

*Docket Numbers:* RP09–397–000.

*Applicants:* Columbia Gas Transmission, LLC.

*Description:* Columbia Gas Transmission, LLC submits Ninety-Second Revised Sheet 25 *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to be effective 4/1/09.

*Filed Date:* 02/26/2009.

*Accession Number:* 20090227–0133.

*Comment Date:* 5 p.m. Eastern Time on Tuesday, March 10, 2009.

*Docket Numbers:* RP09–398–000.

*Applicants:* Millennium Pipeline Company, L.L.C.

*Description:* Millennium Pipeline Company, LLC submits retainage adjustment mechanism annual filing.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090227–0132.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–399–000.

*Applicants:* Dominion Cove Point LNG, LP.

*Description:* Request of Dominion Cove Point LNG, L.P. for Temporary Waiver of Tariff Provision.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090227–5212.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–406–000.

*Applicants:* Paiute Pipeline Company.

*Description:* Paiute Pipeline Co submits a notice of change in rates for natural gas service.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090302–0427.

*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–409–000.

*Applicants:* Cimarron River Pipeline, LLC.

*Description:* Cimarron River Pipeline, LLC submits the Annual Fuel Reimbursement Adjustment.

*Filed Date:* 02/27/2009.

*Accession Number:* 20090302–0419.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–410–000.
*Applicants:* Transcontinental Gas Pipe Line Company.
*Description:* Transcontinental Gas Pipe Line Corp submits First Revised Sheet No. 21 *et al.* to FERC Gas Tariff, Fourth Revised Volume No. 1.
*Filed Date:* 02/27/2009.
*Accession Number:* 20090302–0418.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–412–000.
*Applicants:* Williston Basin Interstate Pipeline Co.
*Description:* Williston Basin Interstate Pipeline Co submits Fifteenth Revised Sheet 724 to FERC Gas Tariff, Second Revised Volume 1, to be effective 3/1/09.
*Filed Date:* 02/27/2009.
*Accession Number:* 20090303–0039.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–414–000.
*Applicants:* SG Resources Mississippi, L.L.C.
*Description:* SG Resources Mississippi, LLC submits First Revised Sheet 20 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 4/1/09.
*Filed Date:* 02/27/2009.
*Accession Number:* 20090303–0040.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–415–000.
*Applicants:* Trunkline Gas Company, LLC.
*Description:* Trunkline Gas Co, LLC submits Twentieth Revised Sheet 10 *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 4/1/09.
*Filed Date:* 02/27/2009.
*Accession Number:* 20090303–0041.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–416–000.
*Applicants:* Panhandle Eastern Pipe Line Company, LP.
*Description:* Panhandle Eastern Pipe Line Co, LP submits Twenty-Second Revised Sheet 4 *et al.* to FERC Gas Tariff, Third Revised Volume 1, to be effective 4/1/09.
*Filed Date:* 02/27/2009.
*Accession Number:* 20090303–0043.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–417–000.
*Applicants:* Southwest Gas Storage Company.
*Description:* Southwest Gas Storage Company submits Twenty-Sixth Revised Sheet 5 to FERC Gas Tariff, First Revised Volume 1, to be effective 4/1/09.
*Filed Date:* 02/27/2009.
*Accession Number:* 20090303–0042.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–418–000.
*Applicants:* Maritimes & Northeast Pipeline, L.L.C.
*Description:* Maritimes & Northeast Pipeline, LLC submits First Revised Sheet 9A *et al.* to FERC Gas Tariff, First Revised Volume 1, to be effective 3/1/09.
*Filed Date:* 02/27/2009.
*Accession Number:* 20090303–0044.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–419–000.
*Applicants:* High Island Offshore System, L.L.C.
*Description:* High Island Offshore System, LLC submits Eighth Revised Sheet 11 to FERC Gas Tariff, Third Revised Volume 1.
*Filed Date:* 02/27/2009.
*Accession Number:* 20090303–0045.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–420–000.
*Applicants:* TransColorado Gas Transmission Company.
*Description:* TransColorado Gas Transmission Co, LLC submits its annual Fuel Gas Reimbursement Percentage Report for year ended 12/31/08, to be effective 4/1/09.
*Filed Date:* 02/27/2009.
*Accession Number:* 20090303–0046.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–421–000.
*Applicants:* Rockies Express Pipeline, LLC.
*Description:* Rockies Express Pipeline, LLC submits its annual percentage reconciliation and adjustment report for year ended 12/31/08.
*Filed Date:* 02/27/2009.
*Accession Number:* 20090303–0047.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

*Docket Numbers:* RP09–422–000.
*Applicants:* Colorado Interstate Gas Company.
*Description:* Colorado Interstate Gas Co submits workpapers intended to validate and to continue the existing reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas.
*Filed Date:* 02/27/2009.
*Accession Number:* 20090303–0048.
*Comment Date:* 5 p.m. Eastern Time on Wednesday, March 11, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 *p.m.* Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E9–5148 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filing

February 27, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* RP09–366–001.

*Applicants:* Mississippi Canyon Gas Pipeline, LLC.

*Description:* Mississippi Canyon Gas Pipeline, LLC submits Substitute First Revised Sheet No 85 to FERC Gas Tariff, Third Revised Volume 1.

*Filed Date:* 02/24/2009.

*Accession Number:* 20090225–0217.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 9, 2009.

*Docket Numbers:* RP09–388–000.

*Applicants:* Transwestern Pipeline Company, LLC.

*Description:* Transwestern Pipeline Company, LLC submits Fifth Revised Sheet No 15 to FERC Gas Tariff, Third Revised Volume No 1.

*Filed Date:* 02/24/2009.

*Accession Number:* 20090225–0216.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 9, 2009.

*Docket Numbers:* RP09–389–000.

*Applicants:* Steckman Ridge, LP.

*Description:* Steckman Ridge, LP submits Original Sheet 1 *et al* to FERC Gas Tariff, Original Volume 1 re Steckman Ridge Storage Project, to be effective 4/1/09.

*Filed Date:* 02/24/2009.

*Accession Number:* 20090225–0218.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 9, 2009.

*Docket Numbers:* RP09–390–000.

*Applicants:* Discovery Gas Transmission LLC.

*Description:* Discovery Gas Transmission LLC submits Sixteenth Revised Sheet No. 20 to its FERC Gas Tariff, Original Volume 1, to be effective 4/1/09.

*Filed Date:* 02/25/2009.

*Accession Number:* 20090226–0208.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 9, 2009.

*Docket Numbers:* RP09–391–000.

*Applicants:* Columbia Gas Transmission, LLC.

*Description:* Columbia Gas Transmission, LLC submits Ninety-First Revised Sheet No. 25 *et al*. to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 4/1/09.

*Filed Date:* 02/25/2009.

*Accession Number:* 20090226–0207.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 9, 2009.

*Docket Numbers:* RP09–392–000.

*Applicants:* Central Kentucky Transmission Company.

*Description:* Central Kentucky Transmission Co submits Seventh Revised Sheet No. 6 to FERC Gas Tariff, Original Volume No. 1, to be effective 4/1/09.

*Filed Date:* 02/25/2009.

*Accession Number:* 20090226–0205.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 9, 2009.

*Docket Numbers:* RP09–393–000.

*Applicants:* Columbia Gas Transmission, LLC.

*Description:* Columbia Gas Transmission, LLC submits Nineteenth Revised Sheet No. 644 to FERC Gas Tariff, Second Revised Volume No. 1, to be effective 4/1/09.

*Filed Date:* 02/25/2009.

*Accession Number:* 20090226–0206.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 9, 2009.

*Docket Numbers:* RP09–394–000.

*Applicants:* KO Transmission Company.

*Description:* KO Transmission Company submits First Revised Sheet 7 *et al*. to its FERC Gas Tariff, Original Volume 1.

*Filed Date:* 02/25/2009.

*Accession Number:* 20090226–0200.

*Comment Date:* 5 p.m. Eastern Time on Monday, March 9, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. E9–5149 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 77–212]**

### Pacific Gas and Electric Company; Notice of Availability of Draft Environmental Assessment

March 4, 2009.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Commission has reviewed an application, filed August 26, 2008 and supplemented January 30, 2009, requesting approval of a proposed plan to provide frost protection and late fall irrigation water for commercial crops and hay in the Potter Valley Project area. Commission staff has prepared a draft Environmental Assessment (EA) and in the draft EA, staff analyzed the potential environmental effects of the proposed plan and concludes that approval of the plan, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the draft EA is on file with the Commission and is available for public inspection. The draft EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using

the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

Any comments should be filed within 15 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix ''Potter Valley Hydroelectric Project No. 77–212'' to all comments. 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 under the ''eFiling'' link).

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–5252 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 2165–022]**

## Alabama Power Company; Notice of Availability of Final Environmental Assessment

March 2, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a New Major License for the Warrior River Hydroelectric Project, which includes the Lewis Smith and Bankhead developments.

The Lewis Smith development is located in north central Alabama in the headwaters of the Black Warrior River on the Sipsey Fork in Cullman, Walker, and Winston Counties. The Bankhead development is located in west central Alabama downstream of the Lewis Smith development, on the Black Warrior River in Tuscaloosa County. The Lewis Smith development occupies 2,691.44 acres of Federal lands administered by the U.S. Forest Service, and the Bankhead development occupies 18.7 acres of Federal lands administered by the Bureau of Land Management. Staff has prepared a final Environmental Assessment (EA) for the project.

The final EA contains staff's analysis of the potential environmental effects of the project and concludes that relicensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the final EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. 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.

For further information, please contact Janet Hutzel at (202) 502–8675 or at *janet.hutzel@ferc.gov.*

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–5214 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[EL07–86–008; EL07–88–008; EL07–92–008]**

## Notice of Filing

March 2, 2009.

*Ameren Services Company and Indiana Public Service Company* v. *Midwest Independent System Operator, Inc* ..... EL07–86–008
*Great Lakes Utilities.* v. *Midwest Independent System Operator, Inc* ..... EL07–88–008
*Wabash Valley Power Association, Inc.* v. *Midwest Independent System Operator, Inc.* ..... EL07–92–008

Take notice that on February 23, 2009, the Midwest Independent System Operator, Inc. (Midwest ISO) submitted proposed revisions to the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff, pursuant to the Commission's November 10, 2008 Order, *Midwest Indep. Trans Sys. Operator, Inc.*, 125 FERC § 61,161 (2008) (November 10 Order).

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 March 16, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–5218 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Filing

March 2, 2009.

| | |
|---|---|
| BE Alabama LLC | Docket No. ER07–1356–007 |
| BE Colquitt LLC | Docket No. ER07–1115–006 |
| BE Rayle LLC E | Docket No. ER07–1118–006 |
| BE Satilla LLC | Docket No. ER07–1120–006 |
| BE Walton LLC | Docket No. ER07–1122–006 |
| Central Power & Lime, Inc. | Docket No. ER08–148–006 |
| J.P. Morgan Ventures Energy Corporation | Docket No. ER05–1232–015 |
| J.P. Morgan Ventures Energy Corporation | Docket No. ER09–335–001 |

Take notice that on February 20, 2009, J.P. Morgan Chase & Co. and its subsidiaries filed a supplement to its December 31, 2008 updated market power analysis, pursuant to the Commission's regulations, 18 CFR 35,36 *et seq.*, as modified by Order No. 697, *Market-Based Rates For Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* FERC Stats. & Regs. § 31,252 (2007); *order on reh'g and clarification,* 123 FERC § 61,055 (collectively, Order No. 697).

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 March 13, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–5215 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. QF90–196–002]**

## Formosa Plastics Corporation, Louisiana; Notice of Filing

March 3, 2009.

Take notice that on February 26, 2009, Formosa Plastics Corporation, Louisiana filed a clarification in supplement to the request for recertification filed with the Commission on December 11, 2008, in response to questions from the Commission on February 20, 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 March 13, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–5225 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket Nos. AC08–164–000; AC08–164–001]**

## MoGas Pipeline, LLC; Notice of Filing

March 3, 2009.

Take notice that on August 27, 2008, VanNess Feldman Attorneys at Law (VanNess Feldman), on behalf of MoGas Pipeline, LLC (MoGas), submitted a request for approval of proposed journal entries to clear Account 102, Electric Plant Purchased or Sold, in connection with the merger of Missouri Interstate Gas, LLC, Missouri Gas Company, LLC, and Missouri Pipeline Company, LLC into MoGas, in compliance with the Commission's Order dated April 20, 2007 in Docket No. CP06–407–000.[1] The filing states in part, that pursuant to the restructuring, Gateway Pipeline Company, LLC, the parent of the three pipelines, was also consolidated into MoGas. On October 2, 2008 and December 5, 2008, VanNess Feldman, on behalf of MoGas, submitted responses to the Chief Accountant's Data Requests dated September 24, 2008 and November 19, 2008, respectively.

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

[1] Missouri Interstate Gas, LLC, 119 FERC ¶ 61,074 (2007).

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 March 18, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–5229 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER99–2923–005]**

### Phelps Dodge Energy Services, LLC; Notice of Filing

March 2, 2009.

Take notice that on February 13, 2009, Phelps Dodge Energy Services, LLC filed a compliance filing to revise its Market-based Rate Tariff, pursuant to Order No. 697.

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 March 6, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–5217 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER09–747–000]**

### Robbins Energy LLC; Notice of Filing

March 3, 2009.

Take notice that on February 24, 2009, Robbins Energy LLC filed, pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824(d), and Part 35 of the Commission's regulations, an application for authorization to make wholesale sales of energy and capacity at negotiated, market-based rates, Rate Schedule FERC No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

*Comment Date:* 5 p.m. Eastern Time on March 17, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–5227 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER09–345–001]**

### The United Illuminating Company; Notice of Filing

March 2, 2009.

Take notice that on February 23, 2009, the United Illuminating Company (United Illuminating) filed additional information to its November 23, 2008 proposed modifications to Schedule 21–UI of the ISO New England Inc. Transmission, Markets and Services Tariff and Localized Facilities for three United Illuminating transmission projects from Category B Network Load, pursuant to the Commission's Order issued January 23, 2009, *see The United Illuminating Co.,* 126 FERC ¶ 61,063 (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 March 16, 2009.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–5216 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER06–615–000; ER07–1257–000; ER08–1113–000; ER08–1178–000; OA08–62–000]**

### California Independent System Operator Corporation; Notice of FERC Staff Attendance

March 3, 2009.

The Federal Energy Regulatory Commission (Commission) hereby gives notice that on the following dates members of its staff will participate in teleconferences and meetings to be conducted by the California Independent System Operator (CAISO). The agenda and other documents for the teleconferences and meetings are available on the CAISO's Web site, *http://www.caiso.com.*

March 9, 2009—MRTU Parallel Operations Touchpoint.

March 10, 2009—MRTU Parallel Operations Touchpoint.

Systems Interface User Group.

2010 Local Capacity Technical Study Meeting.

March 11, 2009—Congestion Revenue Rights.

Settlements and Market Clearing User Group.

March 12, 2009—MRTU Parallel Operations Touchpoint.

Joint Market Surveillance Committee and Stakeholder Meeting.

March 16, 2009—MRTU Parallel Operations Touchpoint.

March 17, 2009— MRTU Parallel Operations Touchpoint.

Systems Interface User Group.

March 18, 2009—Settlements and Market Clearing User Group

Congestion Revenue Rights.

March 19, 2009— MRTU Parallel Operations Touchpoint.

March 20, 2009—Participating Intermittent Resource Program Meeting.

Sponsored by the CAISO, the teleconferences and meetings are open to all market participants, and staff's attendance is part of the Commission's ongoing outreach efforts. The teleconferences and meetings may discuss matters at issue in the above-captioned dockets.

For further information, contact Saeed Farrokhpay at *saeed.farrokhpay@ferc.gov;* (916) 294–0322 or Maury Kruth at *maury.kruth@ferc.gov,* (916) 294–0275.

**Kimberly D. Bose,**

*Secretary.*

[FR Doc. E9–5226 Filed 3–10–09; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Southeastern Power Administration

### Jim Woodruff Project

**AGENCY:** Southeastern Power Administration, DOE.

**ACTION:** Notice of proposed rate adjustment.

**SUMMARY:** Southeastern proposes new rate schedules JW–1–I and JW–2–F to replace Wholesale Power Rate Schedules JW–1–H and JW–2–E for a five-year period from September 20, 2009 to September 19, 2014. Rate schedule JW–1–I is applicable to Southeastern power sold to existing preference customers in the Florida Power Corporation service (Progress Energy) area. Rate schedule JW–2–F is applicable to Florida Power Corporation.

**DATES:** Written comments are due on or before June 9, 2009. A public information and public comment forum will be held at Courtyard by Marriott Tallahassee Capital, in Tallahassee, Florida, at 10 a.m. on April 23, 2009. Persons desiring to speak at the forum are requested to notify Southeastern at least seven (7) days before the forum is scheduled so that a list of forum participants can be prepared. Others present may speak if time permits. Persons desiring to attend the forum should notify Southeastern at least seven (7) days before the forum is scheduled. If Southeastern has not been notified by close of business on April 16, 2009, that at least one person intends to be present at the forum, the forum will be canceled with no further notice.

**ADDRESSES:** Written comments should be submitted to: Kenneth E. Legg, Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711. The public comment Forum will meet at the Courtyard by Marriott Tallahassee Capital, 1018 Apalachee Parkway, Tallahassee, Florida, 32301, Phone (850) 222–8822.

**FOR FURTHER INFORMATION CONTACT:** Leon Jourolmon, Assistant Administrator, Finance and Marketing Division, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia 30635–6711, (706) 213–3800.

**SUPPLEMENTARY INFORMATION:** Existing rate schedules are supported by a July 2004 Repayment Study and other supporting data contained in FERC Docket No. EF04–3031–000. A repayment study prepared in February 2009 shows that the existing rates are not adequate to meet repayment criteria. A revised repayment study with a revenue increase of $5,575,000, or 70.6 percent, for Fiscal Year 2009, through the end of the study, demonstrates that all costs are paid within their repayment life. The increase is primarily due to drought and higher energy prices for purchase power and higher Corps of Engineers operation and maintenance expense. Southeastern is proposing to raise rates to recover this additional revenue.

In the proposed rate schedule JW–1–I, which is available to preference customers, the capacity charge has been raised from $6.95 per kilowatt per month to $12.62 per kilowatt per month. The energy charge has been increased

from 19.95 mills per kilowatt-hour to 36.21 mills per kilowatt-hour. Rate schedule JW–2–F, available to Florida Power Corporation, raises the rate from 90 percent of the Company's fuel cost to 100 percent of the Company's fuel cost.

The proposed rate schedules are available for examination at 1166 Athens Tech Road, Elberton, Georgia, 30635–6711, as is the February 2009 repayment study.

Dated: March 4, 2009.

**Kenneth E. Legg,**

*Administrator.*

[FR Doc. E9–5168 Filed 3–10–09; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2007–0179; FRL–8398–2]**

### Amendment and Extension of an Experimental Use Permit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

**FOR FURTHER INFORMATION CONTACT:** Denise Greenway, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8263; e-mail address: *greenway.denise@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does This Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007–0179. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

#### II. EUP

EPA has issued the following EUP:

*264–EUP–140.* Amendment and Extension. Bayer CropScience, P.O. Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, North Carolina 27709. This EUP allows the use of 0.03 pound of the plant-incorporated protectant *Bacillus thuringiensis* Cry1Ab protein in events T303–3 and T304–40 cotton plants on 152 acres (out of 1,602 total acres) planted to Cry1Ab-containing cotton to evaluate the control of lepidopteran larvae such as bollworm (*Helicoverpa zea*) and tobacco budworm (*Heliothis virescens*). The program is authorized only in the States of Alabama, Arizona, Arkansas, California, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and in Puerto Rico. The EUP is effective from January 1, 2009 to December 31, 2010.

**Authority:** 7 U.S.C. 136c.

#### List of Subjects

Environmental protection, Experimental use permits.

Dated: January 14, 2009.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. E9–5278 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–2009-0143; FRL–8404–8]**

### Computer Sciences Corporation, KFORCE, and Insight Global; Transfer of Data

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Computer Sciences Corporation and its subcontractor, KFORCE and Insight Global, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Computer Sciences Corporation and its subcontractor, KFORCE and Insight Global, have been awarded a contract to perform work for OPP, and access to this information will enable Computer Sciences Corporation and its subcontractor, KFORCE and Insight Global, to fulfill the obligations of the contract.

**DATES:** Computer Sciences Corporation and its subcontractor, KFORCE and Insight Global, will be given access to this information on or before March 16, 2009.

**FOR FURTHER INFORMATION CONTACT:** Felicia Croom, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305-0786; e-mail address: *croom.felicia@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Action Apply to Me?*

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–2009-0143. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

**II. Contractor Requirements**

Under Contract No. EP-W-08-034, Computer Sciences Corporation and its subcontractor, KFORCE and Insight Global, will perform the installation and support of the Agency's Seat Management duties which consist of installation of hardware and software applications, providing help desk support, monitoring seat management assets and providing general IT support for the Office of Pesticide Programs. (OPP).

The OPP has determined that access by Computer Sciences Corporation and its subcontractor, KFORCE and Insight Global, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Computer Sciences Corporation and its subcontractor, KFORCE and Insight Global, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual*. In addition, Computer Sciences Corporation and its subcontractor, KFORCE and Insight Global, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Computer Sciences Corporation and its subcontractor, KFORCE and Insight Global until the requirements in this document have been fully satisfied. Records of information provided to Computer Sciences Corporation and its subcontractor, KFORCE and Insight Global, will be maintained by EPA Project Officers for this contract. All information supplied to Computer Sciences Corporation and its subcontractor, KFORCE and Insight Global, by EPA for use in connection with this contract will be returned to EPA when Computer Sciences Corporation and its subcontractor, KFORCE and Insight Global, have completed their work.

**List of Subjects**

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: February 23, 2009.

**Oscar Morales,**

*Director, Information Technology and Resources Management Division, Office of Pesticide Programs.*

[FR Doc. E9–5222 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0038; FRL–8401–2]**

## Issuance of an Experimental Use Permit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has granted an experimental use permit (EUP) to the following pesticide applicant. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

**FOR FURTHER INFORMATION CONTACT:** Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8077; e-mail address: *cerrelli.susanne@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of This Document and Other Related Information?*

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0038. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

**II. EUP**

EPA has issued the following EUP: *82761–EUP–2*. Issuance. Montana Microbial Products, 510 East Kent Ave., Missoula, MT 59801. This EUP allows the use of 664 pounds of BmJ WP (containing a total of 99.6 pounds of the fungicide, *Bacillus mycoides* isolate J active ingredient) on 440 acres (for 2009 year) and 560 acres (for the remaining permit period) of pecans, peppers, potatoes, sugar beets, and tomatoes to evaluate the control of pecan scab (*Fusicladosporium effusum*); early blight (*Alternaria solani*); Cercospora leaf spot (*Cercospora beticola*) and bacterial spot (*Xanthomonas campestris*). The program is authorized only in the States of Florida, Georgia, Idaho, Minnesota, Montana, and North Dakota. The EUP is effective from January 14, 2009 to March 31, 2011.

**Authority:** 7 U.S.C. 136c.

**List of Subjects**

Environmental protection, Experimental use permits.

Dated: February 3, 2009.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. E9–5238 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–8773–4; EPA–HQ–OW–2008–0055]**

## Notice Regarding National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** EPA previously announced the final NPDES general permit for discharges incidental to the normal operation of vessels, also referred to as the Vessel General Permit (VGP), in the **Federal Register** on December 29, 2008 (73 FR 79493). The permit was signed on December 18, 2008 and became effective on December 19, 2008. EPA subsequently noticed final issuance of the VGP for the states of Hawaii and Alaska, after receipt of a certification pursuant to section 401 of the Clean Water Act (CWA) from Hawaii and a final response on the national consistency determination required by section 307(c)(1) of the Coastal Zone Management Act (CZMA) from Alaska, which was signed on February 2, 2009, with an effective date of February 6, 2009. Today's notice of availability provides notice of EPA's deletion of specific State section 401 certification conditions from Part 6 of the VGP for the States of New Jersey, Illinois, and California.

**FOR FURTHER INFORMATION CONTACT:** For further information on the final vessel NPDES general permit, contact Ryan Albert at EPA Headquarters, Office of Water, Office of Wastewater Management, Mail Code 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; or at tel. 202–564–0763; or Juhi Saxena at EPA Headquarters, Office of Water, Office of Wastewater Management, Mail Code 4203M, 1200 Pennsylvania Ave., NW., Washington, DC 20460; or at tel. 202–564–0719; or e-mail: *CommercialVesselPermit@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### A. General Information

Pursuant to Clean Water Act section 401(a) and EPA's implementing regulations, EPA may not issue a NPDES permit (including the VGP) until the appropriate State certifications have been granted or waived. 40 CFR 124.53(a). Through the certification process, States were given the opportunity, before the VGP was issued, to add conditions to the permit they believe are necessary to ensure that the permit complies with the Clean Water Act and other appropriate requirements of State law, including State water quality standards.

New Jersey Department of Environmental Protection issued its section 401 certification for the VGP on September 24, 2008, and modified its certification on February 2, 2009. This modification deleted certification conditions #1 and #2. Illinois Environmental Protection Agency issued its section 401 certification for the VGP on November 21, 2008, and modified its certification on February 4, 2009. This modification deleted certification condition #9. California State Water Resources Control Board issued its section 401 certification for the VGP on December 17, 2008, and modified its certification on February 4, 2009. This modification deleted certification conditions #1, #2, #5, #7, #8, #9, #10, #13, #14, #15, and 7.1 and 7.2 from certification condition #16 and Attachments 4, 5, and 6 from certification condition #17. Pursuant to EPA's implementing regulations at 40 CFR 124.55(b), EPA may, at the request of a permittee, modify the VGP based on a modified certification received after final agency action on the permit ''only to the extent necessary to delete any conditions based on a condition in a certification invalidated by a court of competent jurisdiction or by an appropriate State board or agency.'' 40 CFR 124.55(b). In accordance with this provision, EPA has removed these deleted certification conditions from the VGP.[1] EPA's letters notifying the requesting permittees that their requests to delete the permit conditions were granted, and a copy of the VGP reflecting those deletions, can be found in the docket for the VGP (Docket ID No. EPA–HQ–OW–2008–0055).[2]

### B. How Can I Get Copies of These Documents and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OW–2008–0055. The official public docket is the collection of materials, including the administrative record, for the final permit, required by 40 CFR 124.18. It is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through *www.regulations.gov* and in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''Federal Register'' listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through the Federal Docket Management System (FDMS) found at *http://www.regulations.gov*. You may use the FDMS to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once at the Web site, enter the appropriate Docket ID No. in the ''Search'' box to view the docket.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket

[1] In addition, the regulations at 40 CFR 124.55(b) also require that EPA receive a request from a permittee for the deleted certification conditions to be removed from the permit. EPA received such requests to remove deleted conditions from Express Marine Inc. on February 3, 2009 in New Jersey, Canal Barge Company Inc. on February 4, 2009 in Illinois and from Foss Maritime Company on February 5, 2009 in California.

[2] In addition, the permit may be found at *http://www.epa.gov/npdes/vessels*.

materials through the docket facility identified in Section B.1.

1. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

3. Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: February 5, 2009.

**Ronald J. Borsellino,**

*Acting Director, Division of Environmental Planning and Protection, EPA Region 2.*

Dated: February 5, 2009.

**Tinka Hyde,**

*Director, Water Division, EPA Region 5.*

Dated: February 5, 2009.

**Alexis Strauss,**

*Director, Water Division, EPA Region 9.*

[FR Doc. E9–5219 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2007–0937;FRL–8400–7]**

## Para-dichlorobenzene; Issuance of Revised Reregistration Eligibility Decision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's Revised Reregistration Eligibility Decision (RED) for the pesticide para-dichlorobenzene. The Agency's risk assessments and other related documents also are available in the Para-dichlorobenzene Docket. Para-dichlorobenzene is an insecticide; the majority of its pesticidal use is as a moth repellant to protect garments from insect damage and in and around bird cages for the control of lice and ticks. EPA has reviewed para-dichlorobenzene through the public participation process that the Agency uses to involve the public in developing pesticide reregistration and tolerance reassessment decisions. Through these programs, EPA is ensuring that all pesticides meet current health and safety standards. A 60–day public comment period was conducted with the publication of the para-dichlorobenzene RED in December 2007. The comments received primarily concerned the episodic ingestion risk estimates. The Agency, in response, revisited the acute oral endpoint selection and agreed that there were no effects attributable to a single dose, and revised the human health risk assessment and the RED accordingly.

**FOR FURTHER INFORMATION CONTACT:** Molly Clayton, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0522; fax number: (703) 308–7070; e-mail address: *clayton.molly@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2007-0937. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

### II. Background

*A. What Action is the Agency Taking?*

Under section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is reevaluating existing pesticides to ensure that they meet current scientific and regulatory standards. EPA completed a RED for the pesticide, para-dichorobenzene, under section 4(g)(2)(A) of FIFRA. Para-dichlorobenzene is an insecticide registered for use on indoor use sites only. It is used as a moth and beetle repellant in products which are applied to use sites such as closets and storage containers, and to repel lice and mites from bird cages. It is also used in empty bee supers (stored indoors), to repel wax moths. When formulated into varpal rope, it is used in attics to repel snakes, mice, rats, squirrels, and bats. EPA has determined that the database to support reregistration is substantially complete and that products containing para-dichlorobenzene are eligible for reregistration, provided the risks are mitigated in the manner described in the revised RED. Upon submission of any required product-specific data under section 4(g)(2)(B) of FIFRA and any necessary changes to the registration and labeling (either to address concerns identified in the RED or as a result of product-specific data), EPA will make a final reregistration decision under section 4(g)(2)(C) of FIFRA for products containing para-dichlorobenzene.

The RED document for para-dichlorobenzene was signed on September 28, 2007. In accordance with the Agency's public participation process, a public comment period for the RED was conducted. This comment period opened December 12, 2007, and closed February 11, 2008. The comments received primarily concerned the episodic ingestion risk estimates. The Agency, in response, re-evaluated the acute oral endpoint selection and agreed that there were no effects attributable to a single dose, and revised the human health risk assessment and the RED accordingly. The revisions made to para-dichlorobenzene RED are as follows: The acute oral endpoint and the risk estimate for episodic ingestion of mothballs were removed, as were the mitigation measures relating to episodic ingestion risk; the acute dermal toxicity category was changed from III to IV to correct a typographical error; and Table 6, the Summary of Labeling Changes, was revised to remove the requirement for special packaging of mothballs, and the ''keep out of reach of children'' language was modified to be consistent with other chemicals with similar warning statements.

EPA is applying the principles of public participation to all pesticides undergoing reregistration and tolerance reassessment. The Agency's Pesticide Tolerance Reassessment and Reregistration; Public Participation Process, published in the **Federal Register** on May 14, 2004 (69 FR 26819) (FRL–7357–9), explains that in conducting these programs, EPA is tailoring its public participation process to be commensurate with the level of risk, extent of use, complexity of issues, and degree of public concern associated

with each pesticide. Due to its uses, risks, and other factors, para-dichlorobenzene was reviewed through an expedited single phase RED process. Through this process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for para-dichlorobenzene.

The reregistration program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. The Agency revised the para-dichlorobenzene RED to address comments received during the public comment period that accompanied the initial RED publication. Therefore, the Agency is issuing the revised para-dichlorobenzne RED without a comment period.

*B. What is the Agency's Authority for Taking this Action?*

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: February 10, 2009.

**Richard P. Keigwin, Jr.,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E9–5241 Filed 3–10–09; 8:45 a.m.]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0086; FRL–8402–4]**

## Pesticide Product Registration Approval

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of an application to register the pesticide product Slug & Snail Killer containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** Leonard Cole, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0086. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

### II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of ferric sodium ethylenediaminetetraacetate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of ferric sodium ethylenediaminetetraacetate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

### III. Approved Application

EPA issued a notice, published in the **Federal Register** of June 22, 2005 (70 FR (36153) (FRL–7714-6), which announced that Woodstream 69 Locust St., Litiz, PA 17543, had submitted an application to register the pesticide product, Slug & Snail Killer, molluscicide (EPA File Symbol 42697-AR), containing 6.0% Ferric Sodium Ethylenediaminetetraacetate. This product was not previously registered.

The application was approved on December 15, 2008, as Slug & Snail Killer (EPA Registration Number 42697-61) for the control of slugs and snails. (L. Cole).

**List of Subjects**

Environmental protection, Chemicals, Pests and pesticides.

Dated: February 11, 2009.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. E9–5193 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2009–0085; FRL–8402–3]**

## Pesticide Product Registration Approval

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces Agency approval of an application to register the pesticide product CA-1 for turf and Ornamentalst containing an active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**FOR FURTHER INFORMATION CONTACT:** Leonard Cole, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5412; e-mail address: *cole.leonard@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0085. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

### II. Did EPA Approve the Application?

The Agency approved the application after considering all required data on risks associated with the proposed use of oriental mustard seed; allyl isothiocyanate, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of oriental mustard seed; allyl isothiocyanate when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

### III. Approved Application

EPA issued a notice, published in the **Federal Register** of August 11, 2004 (690 FR 154 (FRL–7365-9), which announced that Nematrol, Inc., 15 Prince Andrew Ct., St. Catharine's, Ontario L2N 3Y2, Canada, had submitted an application to register the pesticide product, CA-1 for turf and ornamental, netmaticide/fungicide (EPA File Symbol 75618-R), containing 98% oriental mustard seed; allyl isothiocyanate. This product was not previously registered.

The application was approved on December 29, 2008, as CA-1 for turf and ornamentals (EPA Registration Number 75618-1) for the control nematode/fungicide. (L. Cole).

### List of Subjects

Environmental protection, Chemicals, Pests and pesticides.

Dated: February 11, 2009.

**Janet L. Andersen,**

*Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. E9–5195 Filed 3–10–09; 8:45 am]

**BILLING CODE 6560–50–S**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2008–0922; FRL–8402–2]**

## Pesticides; Availability of Updated Schedule for Registration Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA is announcing the availability of an updated schedule for the pesticide registration review program, the periodic review of all registered pesticides mandated by section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The updated schedule provides the timetable for opening dockets for the next 4 years of the registration review program – fiscal year (FY) 2009 to FY 2012 – and includes information on the FY 2007 and FY 2008 registration review cases.

**FOR FURTHER INFORMATION CONTACT:** Kevin Costello, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–

0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Copies of this Document and Other Related Information?*

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0922. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

## II. Background

### *A. What Action is the Agency Taking?*

EPA is issuing an updated schedule for the registration review program, the Agency's periodic review of all registered pesticides mandated by section 3(g) of FIFRA. This updated schedule provides the timetable for opening dockets for the next 4 years of the program – FY 2009 to FY 2012.

The Pesticide Registration Improvement Act of 2003 as amended in 2007 (PRIA II) requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007. To ensure meeting this requirement, EPA will open approximately 70 pesticide registration review dockets annually beginning in FY 2009 and continuing through 2017, so that almost all pesticides registered at the start of the program will have dockets opened by 2017. Some biopesticide dockets will be opened in 2018 through 2020. The Agency anticipates that this scheduling will provide adequate lead times to complete registration review decisions for all currently registered pesticides by 2022. During the first several years of the program, EPA is developing a pipeline of pesticides under review so that it will have the capacity to make 70 or more decisions each year. EPA expects a total of about 710 pesticide cases comprising 1,136 pesticide active ingredients to undergo registration review by 2022.

Each pesticide's place on the schedule is generally determined by its baseline date — the date of its last substantive review — with the oldest cases going first. The baseline date for a pesticide that was subject to reregistration is the date of the Reregistration Eligibility Decision (RED). The baseline date for pesticides that were not subject to reregistration is the registration date of the first product containing the active ingredient. Although, the schedule generally is constructed chronologically, some registration review cases are grouped in the schedule for greater efficiency. For example, pesticides that are chemically related or use-related (e.g., organophosphate and carbamate chemical classes, the coppers group, and the pyrethroids, pyrethrins, and syngergists group) generally will be reviewed during the same time frame.

As reflected in the updated schedule, EPA also intends to review the neonicotinoid pesticides as a group, and has moved several of these pesticides ahead in the schedule so that dockets for all will open no later than FY 2012. The neonicotinoids are a class of insecticides with a common mode of action that affects the central nervous system of insects, causing paralysis and death. European studies suggest that neonicotinic residues can accumulate in pollen and nectar of treated plants, and represent a potential risk to pollinators. The registration review docket for the neonicotinoid imidacloprid opened in December 2008, and the docket for nithiazine is scheduled to be opened in March 2009. To better ensure a ''level playing field'' for the neonicotinoid class as a whole, and to best take advantage of new research as it becomes available, the Agency has moved the docket openings for the remaining neonicotinoids on the registration review schedule (acetamiprid, clothianidin, dinotefuran, nitrapyrin, thiacloprid, and thiamethoxam) to FY 2012.

EPA also announces that beginning in 2009, all new dockets for conventional pesticide cases entering registration review will have a 60–day public comment period. During the comment period on new registration review dockets, the Agency asks interested persons to review Summary Documents and other information in the dockets, and identify any additional information that the Agency should consider during the registration reviews of these pesticides. Based on over 2 years of experience in implementing the registration review program, EPA believes that 60 days will both allow the public to review these dockets and identify any additional information that the Agency should consider, and enable the Agency to open 70 new dockets annually and comply with the PRIA II requirement that each pesticide case be reevaluated within a 15–year timeframe. The comment period for antimicrobial, biopesticide, and microbial pesticide cases has previously been set at 60 days.

Background information on the program is provided at: *http://www.epa.gov/oppsrrd1/registration_review/*.The current schedule is available at: *http://www.epa.gov/oppsrrd1/registration_review/schedule.htm.* An explanation of the schedule is at: *http://www.epa.gov/oppsrrd1/registration_review/explanation.htm*. Information about the neonicotinoids and other groups of related pesticides beginning registration review is available at: *http://www.epa.gov/oppsrrd1/registration_review/highlights.htm*.

### *B. What is the Agency's Authority for Taking this Action?*

EPA is announcing this updated schedule for the registration review program as provided in 40 CFR 155.42(d) and 155.44 of the Procedural Regulations for Registration Review: Final Rule (*http://www.epa.gov/fedrgstr/EPA-PEST/2006/August/Day-09/p12904.htm*). The Agency may consider issues raised by the public or registrant when reviewing a posted schedule, to schedule a pesticide registration review, or to modify the schedule of a pesticide registration review as appropriate. This schedule will be updated at least once every year.

## List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Dated: February 9, 2009.

**Richard P. Keigwin, Jr.**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. E9–5199 Filed 3–10–09; 8:45 a.m.]

**BILLING CODE 6560–50–S**

## FARM CREDIT ADMINISTRATION

### Farm Credit Administration Board; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on March 12, 2009, from 9 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Roland E. Smith, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

- February 12, 2009.

*B. New Business*

- Director Elections-Proposed Rule.

Dated: March 6, 2009.

**Gaye Calhoun,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. E9–5381 Filed 3–9–09; 4:15 pm]

**BILLING CODE 6705–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. AUC–09–79–A (Auction 79); AU Docket No. 09–21; DA 09–422]**

### Auction of FM Broadcast Construction Permits Scheduled for September 1, 2009; Comment Sought on Competitive Bidding Procedures for Auction 79

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document announces the auction of 122 FM broadcast construction permits scheduled to commence on September 1, 2009 (Auction 79). This document also seeks comments on competitive bidding procedures for Auction 79.

**DATES:** Comments are due on or before March 20, 2009, and reply comments are due on or before April 1, 2009.

**ADDRESSES:** Comments and reply comments must be identified by AU Docket No. 09–21. Comments may be filed electronically using the Internet by accessing the Federal Communications Commission's (Commission) Electronic Comment Filing System (ECFS) at *http://www.fcc.gov/cgb/ecfs.* Filers should follow the instructions provided on the Web site for submitting comments. The Wireless Telecommunications and Media Bureaus request that a copy of all comments and reply comments be submitted electronically to the following address: *auction79@fcc.gov.* In addition, comments and reply comments may be submitted by any of the following methods:

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureaus continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. Eastern Time (ET). All hand deliveries must be held together with rubber bands or fasteners. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: *FCC504@fcc.gov* or telephone: 202–418–0530 or TTY: 202–418–0432.

**FOR FURTHER INFORMATION CONTACT:** *Wireless Telecommunications Bureau, Auctions and Spectrum Access Division:* For auction legal questions: Howard Davenport or Lynne Milne at (202) 418–0660. For general auction questions: Debbie Smith or Linda Sanderson at (717) 338–2868. *Media Bureau, Audio Division:* For service rule questions: Lisa Scanlan or Tom Nessinger at (202) 418–2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of the *Auction 79 Comment Public Notice* released on February 27, 2009. The complete text of the *Auction 79 Comment Public Notice,* including Attachment A, and related Commission documents, are available for public inspection and copying from 8:00 a.m. to 4:30 p.m. ET Monday through Thursday or from 8 a.m. to 11:30 a.m. ET on Fridays in the FCC Reference Information Center, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The *Auction 79 Comment Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–488–5300, facsimile 202–488–5563, or you may contact BCPI at its Web site: *http://www.BCPIWEB.com.* When ordering documents from BCPI, please provide the appropriate FCC document number, for example, DA 09–422. The *Auction 79 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: *http://wireless.fcc.gov/auctions/79/,* or by using the search function for AU Docket No. 09–21 on the ECFS Web page at *http://www.fcc.gov/cgb/ecfs/.*

**I. Construction Permits in Auction 79**

1. Auction 79 will offer 122 construction permits in the FM broadcast service as specified in Attachment A of the *Auction 79 Comment Public Notice* which lists vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments. Consistent with 47 U.S.C. 309(j), the Wireless Telecommunications and Media Bureaus (Bureaus) seek comment on the following issues relating to Auction 79.

*A. Auction Structure*

i. Simultaneous Multiple-Round Auction Design

2. The Bureaus propose to auction all construction permits included in Auction 79 using the Commission's standard simultaneous multiple-round auction. This type of auction offers every construction permit for bid at the

same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit. The Bureaus seek comment on this proposal.

ii. Round Structure

3. The Commission will conduct Auction 79 over the Internet, and telephonic bidding will be available as well. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

4. The auction will consist of sequential bidding rounds, each followed by the release of round results. The Bureaus propose to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureaus may change the amount of time for the bidding rounds, amounts of time between rounds, or the number of rounds per day depending upon bidding activity and other factors. The Bureaus seek comment on this proposal.

iii. Stopping Rule

5. For Auction 79, the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids, applies a proactive waiver, or withdraws a provisionally winning bid (if bid withdrawals are permitted). Thus, unless the Bureaus announce alternative procedures during the auction, bidding will remain open on all construction permits until bidding stops on every construction permit. However, the Bureaus propose to retain the discretion to exercise any of the following options during Auction 79: (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder applies a waiver, withdraws a provisionally winning bid (if bid withdrawals are permitted) or places any new bids on any construction permit for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) declare that the auction will end after a specified number of additional rounds (which is called a special stopping rule). If the Bureaus invoke this special stopping rule, they will accept bids in the specified final round(s) after which the auction will close, and (c) keep the auction open even if no bidder submits any new bids, applies a waiver or withdraws any provisionally winning bids (if permitted). In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a waiver. The Bureaus seek comment on these stopping rule proposals.

iv. Information Relating to Auction Delay, Suspension, or Cancellation

6. For Auction 79, the Bureaus propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, administrative or weather necessity, evidence of an auction security breach or unlawful bidding activity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureaus seek comment on this proposal.

*B. Auction Procedures*

i. Upfront Payments and Bidding Eligibility

7. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each FM construction permit being auctioned. A bidder's upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on construction permits. Upfront payments protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these considerations in mind, the Bureaus propose the upfront payments set forth in Attachment A of the *Auction 79 Comment Public Notice.*

8. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureaus propose that each construction permit be assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction 79 Comment Public Notice.* The Bureaus seek comment on these proposals.

ii. Activity Rule

9. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

10. The Bureaus propose to divide the auction into at least two stages, each characterized by a different activity requirement. The auction will start in Stage One with a required 75 percent activity level. The Bureaus propose to advance the auction to the next stage with a required 95 percent activity level by announcement during the auction. In exercising this discretion, the Bureaus will consider a variety of measures of auction activity, including but not limited to the percentage of construction permits (as measured in bidding units) on which there are new bids, the number of new bids, and the increase in revenue. The Bureaus seek comment on this proposal.

iii. Activity Rule Waivers and Reducing Eligibility

11. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding, not to a particular construction permit. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction

participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from bidding in a particular round.

12. The Bureaus propose that each bidder in Auction 79 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

iv. Reserve Price or Minimum Opening Bids

13. In light of 47 U.S.C. 309(j), the Bureaus propose to establish minimum opening bid amounts for Auction 79 as an effective bidding tool for accelerating the competitive bidding process. The Bureaus do not propose to establish a separate reserve price for the construction permits to be offered in Auction 79.

14. For Auction 79, the Bureaus propose minimum opening bid amounts determined by taking into account the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, and recent broadcast transaction data. This proposed minimum opening bid amount for each construction permit is set forth in Attachment A of the *Auction 79 Comment Public Notice*. The Bureaus seek comment on this proposal.

v. Bid Amounts

15. The Bureaus propose that, in each round, eligible bidders be able to place a bid on a given construction permit in any of up to nine different amounts. Under this proposal, the FCC Auction System interface will list the acceptable bid amounts for each construction permit.

16. The first of these nine acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage.

17. For Auction 79, the Bureaus propose to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. To calculate the eight additional acceptable bid amounts, the Bureaus propose to use a bid increment percentage of 5 percent.

18. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the minimum acceptable bid percentage, the bid increment percentage, and the number of acceptable bid amounts if the Bureaus determine that circumstances so dictate. Further, the Bureaus retain the discretion to do so on a construction permit-by-construction permit basis. The Bureaus also retain the discretion to limit (a) the amount by which a minimum acceptable bid for a construction permit may increase compared with the corresponding provisionally winning bid, and (b) the amount by which an additional bid amount may increase compared with the immediately preceding acceptable bid amount. The Bureaus seek comment on the circumstances under which the Bureaus should employ such a limit, factors it should consider when determining the dollar amount of the limit, and the tradeoffs in setting such a limit or changing other parameters, such as changing the minimum acceptable bid percentage, the bid increment percentage, or the number of acceptable bid amounts. If the Bureaus exercise this discretion, they will alert bidders by announcement in the FCC Auction System during the auction. The Bureaus seek comment on these proposals.

vi. Provisionally Winning Bids

19. Provisionally winning bids are bids that would become final winning bids if the auction were to close in a specific round. At the end of a bidding round, the winning bid for each construction permit will be determined based on the highest bid amount received for the construction permit. In the event of identical high bid amounts being submitted on a construction permit in a given round (i.e., tied bids), the Bureaus will use a random number generator to select a single provisionally winning bid from among the tied bids. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

20. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the construction permit at the close of a subsequent round, unless the provisionally winning bid is withdrawn (if bid withdrawals are permitted). Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal and Bid Withdrawal

21. For Auction 79, the Bureaus propose the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. In contrast to the bid withdrawal provisions, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. The Bureaus seek comment on this bid removal proposal.

22. Where permitted in an auction, bid withdrawals provide a bidder with the option of withdrawing bids placed in prior rounds that have become provisionally winning bids. If permitted, a bidder that withdraws its provisionally winning bid(s) is subject to the bid withdrawal payment provisions of the Commission's rules. Based on rulemaking order guidance and the experience of the Bureaus in prior FM auctions, the Bureaus propose to prohibit bidders in this auction from withdrawing any bids after the round in which bids were placed has closed. The Bureaus seek comment on whether bid withdrawals should be permitted in Auction 79.

*C. Post-Auction Payments*

i. Interim Withdrawal Payment Percentage

23. If withdrawals are allowed in this auction, the Bureaus seek comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or a subsequent auction. However, if a construction permit for which a bid has been withdrawn does not receive a subsequent higher bid or winning bid in the same auction, the final withdrawal payment cannot be calculated until a corresponding construction permit

receives a higher bid or winning bid in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. The Commission's rules provide that in advance of each auction, the Commission shall establish a percentage between three percent and twenty percent of the withdrawn bid to be assessed as an interim bid withdrawal payment.

24. The Commission has indicated that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the construction permits being offered. The Commission noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate construction permits offered, such as when few construction permits are offered, the construction permits offered are not on adjacent frequencies or in adjacent areas, or there are few synergies to be captured by combining construction permits.

25. Applying the reasoning that a higher interim withdrawal payment percentage is appropriate when aggregation of construction permits is not expected, as with the construction permits subject to competitive bidding in Auction 79, if the Bureaus allow bid withdrawals in this auction, the Bureaus propose an interim bid withdrawal payment of twenty percent of the withdrawn bid for this auction. The Bureaus seek comment on this proposal.

ii. Additional Default Payment Percentage

26. Any winning bidder that defaults or is disqualified after the close of an auction (i.e., fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less.

27. As previously noted by the Commission, defaults weaken the integrity of the auction process and may impede the deployment of service to the public. In light of these considerations for Auction 79, the Bureaus propose to establish an additional default payment of twenty percent of the relevant bid as more effective in deterring defaults than a smaller percentage. The Bureaus seek comment on this proposal.

**II. Commission ex parte Rules**

28. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

**Gary D. Michaels,**

*Deputy Division Chief, Auctions and Spectrum Access Division, WTB.*

[FR Doc. E9–5244 Filed 3–10–09; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments on full clearance of the following collection currently approved by OMB on an emergency basis: Temporary Liquidity Program (OMB Control No. 3064–0166).

**DATES:** Comments must be submitted on or before May 11, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods. All comments should refer to the name of the collection:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *E-mail: comments@fdic.gov.*

Include the name of the collection in the subject line of the message.

- *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room F–1064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Leneta G. Gregorie at the address identified above.

**SUPPLEMENTARY INFORMATION:**

**Proposal To Obtain Full Clearance of the Following Collection of Information Currently Approved on an Emergency Basis**

*Title:* Temporary Liquidity Guarantee Program.

*OMB Number:* 3064–0166.

*Estimated Number of Respondents:*

Initial report of amount of senior unsecured debt—14,400.
Subsequent reports on amount of senior unsecured debt—14,400.
Opt-out/opt-in notice—1,600.
Notice of debt guarantee—9,150.
Notice of transaction account guarantee—8,000.
Notice of issuance of debt guarantee—13,650.
Notice of termination of participation—300.
Debt-holder guarantee claims—2,300.
Bankruptcy POC/evidence of POC—300.
Request for increase in debt guarantee limit—1,000.
Request for increase in presumptive debt guarantee limit—100.
Request to opt-in to debt guarantee program—100.
Request by affiliate to participate in debt guarantee program—50.
Application to issue mandatory convertible debt: 25.

*Frequency of Response:*

Initial report of amount of senior unsecured debt—once.
Subsequent reports on amount of senior unsecured debt—4.
Opt-out/opt-in notice—once.
Notice of debt guarantee—once.
Notice of transaction account guarantee—once.
Notice of issuance of debt guarantee—26 to 250.
Notice of termination of participation—once.

Debt-holder guarantee claims—once.
Bankruptcy POC/evidence of POC—once.
Request for increase in debt guarantee limit—once.
Request for increase in presumptive debt guarantee limit—once.
Request to opt-in to debt guarantee program—once.
Request by affiliate to participate in debt guarantee program—once.
Application to issue mandatory convertible debt—5.

*Affected Public:* FDIC-insured depository institutions, thrift holding companies, bank and financial holding companies.

*Estimated Time per Response:*

Initial report of amount of senior unsecured debt—1 hour.
Subsequent reports on amount of senior unsecured debt—1 hour.
Opt-out/opt-in notice—0.5 hour.
Notice of debt guarantee—1 to 2 hours.
Notice of transaction account guarantee—2 hours.
Notice of issuance of debt guarantee—0.5 to 3 hours.
Notice of termination of participation—3 hours.
Debt-holder guarantee claims—3 hours.
Bankruptcy POC/evidence of POC–1 hour.
Request for increase in debt guarantee limit—2 hours.
Request for increase in presumptive debt guarantee limit—2 hours.
Request to opt-in to debt guarantee program—1 hour.
Request by affiliate to participate in debt guarantee program—2 hours.
Application to issue mandatory convertible debt—1 hour.

*Total Annual Burden:* 2,201,625 hours.

*General Description of Collection:* This collection includes reporting, recordkeeping and disclosure requirements associated with the FDIC's Temporary Liquidity Guarantee (TLG) Program. TLG Program is comprised of (1) a guarantee by the FDIC of all unsecured, unsubordinated debt of insured depository institutions, their bank holding companies, financial holding companies, and thrift holding companies (other than unitary thrift holding companies) issued between October 14, 2008, and June 30, 2009, with guarantees expiring not later than June 30, 2012, and with a system of fees to be paid by these institutions for such guarantees; and (2) a 100 percent guaranty of non-interest bearing transaction accounts held by insured depository institutions until December 31, 2009 (FDIC guarantees). The TLG program is designed to strengthen confidence and encourage liquidity in the banking system in order to ease lending to creditworthy businesses and consumers. The reporting, recordkeeping and disclosure requirements apply to eligible entities participating in either the Debt Guarantee Component of the program or the Deposit Guarantee Component or both. The information obtained allows the FDIC to monitor its exposure under the TLG Program and determine assessments for entities participating in the program. The required disclosures ensure that depositors, debt holders, and the general public are on notice as to which entities are participating in the program, the extent to which deposits in noninterest-bearing transaction accounts are FDIC-insured, and whether newly-issued senior unsecured debt is guaranteed by the FDIC.

**Request for Comment**

Comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for full clearance of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this ____ day of March, 2009.

Federal Deposit Insurance Corporation.

**Valerie Best,**

*Assistant Executive Secretary.*

[FR Doc. E9–5230 Filed 3–10–09; 8:45 am]

**BILLING CODE 6714–01–P**

## 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 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 agreements are available through the Commission's Web site (*http://www.fmc.gov*) or contacting the Office of Agreements at (202) 523–5793 or *tradeanalysis@fmc.gov.*

*Agreement No.:* 011353–034.

*Title:* The Credit Agreement.

*Parties:* APL Co. PTE Ltd.; Crowley Latin America Services, LLC; Dole Ocean Cargo Express; King Ocean Services de Venezuela/King Ocean Services Limited; Seaboard Marine of Florida, Inc.; and Seaboard Marine Ltd.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

*Synopsis:* The amendment deletes Crowley Liner Services, Inc. as a party to the Agreement, replacing it with Crowley Latin America Services, LLC, and deletes A.P. Moller-Maersk A/S, Evergreen Line Joint Service Agreement, and Caribbean General Maritime, Ltd. as parties to the Agreement.

*Agreement No.:* 011579–015.

*Title:* Inland Shipping Service Association Agreement.

*Parties:* Crowley Latin America Services, LLC; Seaboard Marine, Ltd.; and Seaboard Marine of Florida, Inc.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900, Washington, DC 20036.

*Synopsis:* The amendment deletes Crowley Liner Services, Inc. as a party to the Agreement and replaces it with Crowley Latin America Services, LLC.

*Agreement No.:* 012037–001.

*Title:* Maersk Line/CMA CGM TA3 Space Charter Agreement.

*Parties:* A.P. Moeller-Maersk A/S and CMA CGM S.A.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The amendment reduces the amount of space being chartered, extends the duration of the agreement, revises the notice required for resignation, and incorporates other miscellaneous changes.

*Agreement No.:* 012064.

*Title:* Hapag-Lloyd/NYK Mexico-Dominican Republic Slot Exchange Agreement.

*Parties:* Hapag-Lloyd AG and Nippon Yusen Kaisha.

*Filing Party:* Wayne R. Rohde, Esq.; Sher & Blackwell LLP; 1850 M Street, NW., Suite 900; Washington, DC 20036.

*Synopsis:* The agreement authorizes the parties to exchange slots on their services in the trades between ports on the East and Gulf Coasts of the United

States and ports on the Caribbean Coast of Mexico and Dominican Republic.

Dated: March 5, 2009.

By Order of the Federal Maritime Commission.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. E9–5126 Filed 3–10–09; 8:45 am]

**BILLING CODE 6730–01–P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

Seawest Logistics, Inc., 5000 Armand Frappier, St. Hubert, JAZ 1G5 Canada. *Officers:* Fouad Zaki, Vice President (Qualifying Individual), Vincent Viviani, Gen. Manager.

CNN International LLC, 5308 NE. 2nd Terrace, Fort Lauderdale, FL 33334. *Officers:* Kathleen Holder, Manager (Qualifying Individual), Caroline Chatuel, Member.

Pacific Logistics Corp. dba PACLO Ocean Services, 5600 Knott Avenue, Buena Park, CA 90621. *Officers:* Sing Kit Leong, Corp. Secretary (Qualifying Individual), Douglas E. Hockersmith, CEO.

Core Nautical Group, LLC, 16499 NE 19 Ave., North Miami Beach, FL 33162. *Officer:* Maritza Silva, Managing Member (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Scan Global Logistics, Inc., 768 So. Central Ave., Atlanta, GA 30354. *Officer:* Karen M. Gulrich, Vice President (Qualifying Individual).

Indigo Logistics, LLC, 601 Interchange Drive, Atlanta, GA 30336. *Officer:* Jeffrey W. Schumacher, Member (Qualifying Individual).

Global Transportation Management LLC, 35790 Northline Road, Romulus, MI 48174. *Officer:* Mark Brodie, Managing Member (Qualifying Individual).

World Logistics Services Corporation, 132 East 43rd St., The Chrysler Building, New York, NY 10017. *Officers:* Steve Licural, President (Qualifying Individual), Patricia Collins, CEO.

Atlantic Marine Services Inc., 6332 NW. 97th Ave., Miami, FL 33178. *Officers:* Fabrice Pimbert, Vice President (Qualifying Individual), Ernesto R. Botifoll, President.

MAC Industries Inc. dba MAC Container Line, 209 Aveinda Del Mar, San Clemente, CA 92672. *Officers:* Brad Heier, President (Qualifying Individual), Gwen A. Heier, Director.

CCT Corporation dba CCT Marine dba CCT Global Logistics, 12250 NW. 25th Street, Miami, FL 33182. *Officer:* Carolina Loyola, Secretary (Qualifying Individual).

Rado International, Inc., 2251 Sylvan Road, Ste. C, East Point, GA 30344. *Officer:* Lovett Brooks, CEO (Qualifying Individual).

Razor Enterprise Inc., 175–41 148th Rd., 2nd Floor, Jamaica, NY 11434. *Officers:* Bibi R. Juman, Vice President (Qualifying Individual), Edmond Yan, President.

Stream Links Express, Inc. dba E-Freight Solutions, 3750 West Century Blvd., Inglewood, CA 90303. *Officers:* Tommy Tam, President (Qualifying Individual), Cynthia Wong, Secretary.

Tex-Star Shipping Company, 15993 Cottage Ivy Circle, Tomball, TX 77377. Judy E. Nowak, Sole Proprietor.

Straight Point Line, Inc., 72 Sharp Street, Hingham, MA 02043. *Officer:* Paul Kalita, President (Qualifying Individual).

Goodnight International, Inc., 5160 William Mills Street, Jacksonville, FL 32226. *Officers:* Maryjane Mackey, President (Qualifying Individual), Franklin C. Johnson, CEO.

Meyers Van Lines, Inc., 370 Concord Ave., Bronx, NY 10454. *Officer:* Ofer Drori, President (Qualifying Individual).

CNS Logistics, Inc., 615 W. Walnut Street, Compton, CA 90220. *Officers:* Young S. Choi, CFO (Qualifying Individual), Soo Y. Yoon, President.

World Wide Duty Free, Ltd. dba AAA International Logistics, 1314–16 South Howard Street, Philadelphia, PA 19147. *Officers:* Roberto Valente, Vice President (Qualifying Individual), Natalya Ryabysheva, Treasurer, Treasurer.

ASC Miami, Corp., 9949 NW. 89th Ave., Bay #5, Medley, FL 33178. *Officer:* Maria Del Pilar Torres, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants:

Taymegs Impex Inc., 2429 S. Collins Street, Arlington, TX 76014. *Officers:* Michael O. Famuyide, President (Qualifying Individual), Muyis A. Kehinde, Secretary.

Transit Air Cargo, Inc., 2204 E. 4th Street, Santa Ana, CA 92705. *Officer:* Jamshed Khodayar, President (Qualifying Individual).

Noah International Logistics, Inc., 110 Mackenzie Lane, Fayetteville, GA. *Officers:* Noah C. Rader, President (Qualifying Individual), Reseanne N. Avola-Rader, Secretary.

United Shipping, Inc., 7041 Grand National Dr., Orlando, FL 32819. *Officers:* Saleh M. Abdul, Treasurer (Qualifying Individual), Ghasan M. Elkhatib, President.

Blue Lake Shipping LLC, 20721 NE Interlachen Lane, Fairview, OR 97024. *Officer:* Sheri L. Parshall, President (Qualifying Individual).

KT Logistics, Inc., 1915 McKinley Ave., La Verne, CA 91750. *Officers:* Mary Ann Ruiz, Treasurer (Qualifying Individual), James Amakasu, CEO.

Toll Global Forwarding (USA)Inc. dba Baltrans Logistics Inc., One Cross Island Plaza, Ste. 203, Rosedale, NY 11422. *Officer:* Tracy Wang, CEO (Qualifying Individual).

Temis Shipping LLC, 1200 Brickell Ave., Miami, FL 33131. *Officers:* Claudio Insenga, MGRM (Qualifying Individual), Annamaria Perrone, Member.

Dated: March 5, 2009.

**Karen V. Gregory,**

*Secretary.*

[FR Doc. E9–5135 Filed 3–10–09; 8:45 am]

**BILLING CODE 6730–01–P**

## 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 March 24, 2009.

**A. Federal Reserve Bank of Chicago** (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. Robert C. Fick, Davenport, Iowa;* to acquire an additional 5 percent, for an aggregate ownership of 16 percent of River Valley Bancorp, Inc., Davenport, Iowa, and thereby indirectly acquire Valley Bank, Moline, Illinois; Freedom Bank, Sterling, Illinois; and Valley Bank, Fort Lauderdale, Florida.

Board of Governors of the Federal Reserve System, March 6, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–5140 Filed 3–10–09; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 3, 2009.

**A. Federal Reserve Bank of Chicago** (Burl Thornton, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Grand River Commerce, Inc.*, Grandville, Michigan, to become a bank holding company by acquiring 100 percent of the voting shares of Grand River Bank (in organization), Grandville, Michigan.

**B. Federal Reserve Bank of Kansas City** (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

*1. CB Bancshares, Inc.*, Topeka, Kansas, to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Bank of Weir, Weir, Kansas.

Board of Governors of the Federal Reserve System, March 4, 2009.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E9–4863 Filed 3–10–09; 8:45 am]

**BILLING CODE 6210–01–S**

## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request

**AGENCY:** Federal Trade Commission (''FTC'' or ''Commission'').

**ACTION:** Notice.

**SUMMARY:** The information collection requirements described below will be submitted to the Office of Management and Budget (''OMB'') for review, as required by the Paperwork Reduction Act (''PRA''). The FTC is seeking public comments on its proposal to extend through March 31, 2012, the current PRA clearances for information collection requirements contained in four consumer financial regulations promulgated by the Federal Reserve Board and enforced by the Commission. Those clearances expire on March 31, 2009.

**DATES:** Comments must be received on or before April 10, 2009.

**ADDRESSES:** Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Regs BEMZ, PRA Comment, FTC File No. P084812'' to facilitate the organization of comments. Please note that comments will be placed on the public record of this proceeding—including on the publicly accessible FTC website, at (*http://www/ftc.gov/os/publiccomments.shtm*) — and therefore should not include any sensitive or confidential information. In particular, comments should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secrets and commercial or financial information obtained from a person and privileged or confidential . . . ,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-RegsBEMZ*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://secure.commentworks.com/ftc-RegsBEMZ*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

A comment filed in paper form should include the ''Regs BEMZ, PRA Comment, FTC File No. P084812'' reference both in the text and on the envelope, and should be mailed or

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

All comments should additionally be submitted to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167, because U.S. Postal Mail is subject to lengthy delays due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information requirements should be addressed to Carole Reynolds or James Chen, Attorneys, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580, (202) 326-3230 or (202) 326-2659.

**SUPPLEMENTARY INFORMATION:** The four regulations covered by this notice are:

(1) Regulations promulgated under The Equal Credit Opportunity Act, 15 U.S.C. 1691 *et seq.* (''ECOA'') (''Regulation B'') (OMB Control Number: 3084-0087);
(2) Regulations promulgated under The Electronic Fund Transfer Act, 15 U.S.C. 1693 *et seq.* (''EFTA'') (''Regulation E'') (OMB Control Number: 3084-0085);
(3) Regulations promulgated under The Consumer Leasing Act, 15 U.S.C. 1667 *et seq.* (''CLA'') (''Regulation M'') (OMB Control Number: 3084-0086); and
(4) Regulations promulgated under The Truth-In-Lending Act, 15 U.S.C. 1601 *et seq.* (''TILA'') (''Regulation Z'') (OMB Control Number: 3084-0088).

Each of these four rules impose certain recordkeeping and disclosure requirements associated with providing credit or with other financial transactions. As detailed below, the FTC staff has calculated the PRA burden for each rule based on the compliance costs of entities over which the FTC has jurisdiction. All of these rules require covered entities to keep certain records. FTC staff believes that these entities likely would retain these records in the normal course of business even absent the recordkeeping requirements in the rules.[2] Covered entities, however, may incur some burden associated with ensuring that they do not prematurely dispose of relevant records (*i.e.*, during the period of time when they are required to retain records by the applicable rule).

Disclosure requirements involve both set-up and monitoring costs as well as certain transaction-specific costs. ''Set-up'' burden, incurred by new entrants only, includes identifying the applicable disclosure requirements, determining compliance obligations, and designing and developing compliance systems and procedures. ''Monitoring'' burden, incurred by all covered entities, includes reviewing changes to regulatory requirements, making necessary revisions to compliance systems and procedures, and monitoring the ongoing operation of systems and procedures to ensure continued compliance. ''Transaction-related'' burden refers to the effort associated with providing the various required disclosures in individual transactions. While this burden varies with the number of transactions, the figures shown for transaction-related burden in the tables that follow are estimated averages.

The actual range of compliance burden experienced by covered entities, and reflected in those averages, varies widely. Depending on the extent to which covered entities have developed computer-based systems and procedures for providing the required disclosures (and/or the extent to which entities utilize electronic transactions, communications, and/or electronic recordkeeping), and the efficacy of those systems and procedures, some entities may have little burden, while others may have a higher burden.[3]

Calculating the burden associated with the four regulations' disclosure requirements is very difficult because of the highly diverse group of affected entities. The ''respondents'' included in the following burden calculations consist of credit and lease advertisers, creditors, financial institutions, service providers, certain government agencies and others involved in delivering electronic fund transfers (''EFTs'') of government benefits, and lessors.[4] The burden estimates represent FTC staff's best assessment, based on its knowledge and expertise relating to the financial services industry. To derive these estimates, FTC staff considered the wide variations in covered entities': (1) size and location; (2) credit or lease products offered, extended, or advertised, and their particular terms; (3) types of EFTs used; (4) types and occurrences of adverse actions; (5) types of appraisal reports utilized; and (6) computer systems and electronic features of compliance operations.

Because some covered entities make required disclosures in the ordinary course of business, these disclosures do not impose PRA burden on them. In addition, as noted above, some entities use computer-based and/or electronic means of providing the required disclosures, while others rely on methods requiring more manual effort.

The cost estimates detailed below relate solely to labor costs, including the time necessary to train employees how to comply with the regulations. The applicable PRA requirements impose minimal capital or other non-labor costs, as affected entities generally have the necessary equipment for other business purposes. Similarly, FTC staff estimates that compliance with these rules entails minimal printing and copying costs beyond that associated with documenting financial transactions in the ordinary course of business.

[2] PRA ''burden'' does not include effort expended in the ordinary course of business, regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

[3] For example, large companies may use computer-based and/or electronic means to provide required disclosures, including issuing some disclosures en masse, *e.g.*, notices of changes in terms. Smaller companies may have less automated compliance systems but may nonetheless rely on electronic mechanisms for disclosures and recordkeeping. Regardless of size, some entities may utilize compliance systems that are fully integrated into their general business operational system; as such, they may have minimal additional burden. Other entities may have incorporated fewer of these approaches into their systems and may have a higher burden.

[4] The Commission generally does not have jurisdiction over banks, thrifts, and federal credit unions under the applicable regulations.

**1. Regulation B**

The ECOA prohibits discrimination in the extension of credit. The Board of Governors of the Federal Reserve System (''FRB'') promulgated Regulation B, 12 CFR 202, to implement the ECOA. Regulation B establishes disclosure requirements to assist customers in understanding their rights under the ECOA and recordkeeping requirements to assist in detecting unlawful discrimination and other violations. The FTC enforces the ECOA as to all creditors except those (such as federally chartered or insured depository institutions) that are subject to the regulatory authority of another federal agency.

**Estimated annual hours burden:** 3,129,437 hours, rounded to the nearest thousand (1,153,500 recordkeeping hours + 1,975,937 disclosure hours)

Recordkeeping: FTC staff estimates that Regulation B's general recordkeeping requirements affect 1,000,000 credit firms within the Commission's jurisdiction, at an average annual burden of one hour per firm, for a total of 1,000,000 hours. Staff also estimates that the requirement that mortgage creditors monitor information about race/national origin, sex, age, and marital status imposes a maximum burden of one minute each[5] for approximately 9 million credit applications,[6] for a total of 150,000 hours. Staff also estimates that keeping records of self-testing pursuant to the regulation would affect 2,500 firms, with an average annual burden of one hour per firm, for a total of 2,500 hours, and that recordkeeping of any corrective action for self-testing would affect 250 firms in a given year, with an average annual burden of four hours per firm, for a total of 1,000 hours. The total estimated recordkeeping burden is 1,153,500 hours.

Disclosure: Regulation B requires that creditors (*i.e.*, entities that regularly participate in a credit decision, including setting the terms of the credit) provide notice whenever they take adverse action. It requires entities that extend various types of mortgage credit to provide a copy of the appraisal report to applicants or to notify them of their right to a copy of the report (and thereafter provide a copy of the report, upon the applicant's request). It also requires that, for accounts that spouses may use or for which they are contractually liable, creditors who report credit history must do so in a manner reflecting both spouses' participation. Further, it requires creditors that collect applicant characteristics for purposes of conducting a self-test to disclose to those applicants that providing the information is optional, that the creditor will not take the information into account in any aspect of the credit transaction, and, if applicable, that the information will be noted by visual observation or surname if the applicant chooses not to provide it.[7]

Regulation B applies to retailers, mortgage lenders, mortgage brokers, finance companies, utilities (for some requirements), and others. Below is FTC staff's best estimate of burden applicable to the wide spectrum of these entities within the FTC's jurisdiction.

REGULATION B: DISCLOSURES—BURDEN HOURS

| | Setup/Monitoring[1] | | | Transaction-related[2] | | | |
|---|---|---|---|---|---|---|---|
| Disclosures | Respondents | Average Burden per Respondent (hours) | Total Setup/ Monitoring Burden (hours) | Number of Transactions | Average Burden per Transaction (minutes) | Total Transaction Burden (hours) | Total Burden (hours) |
| Credit history reporting | 250,000 | .25 | 62,500 | 125,000,000 | .25 | 520,833 | 583,333 |
| Adverse action notices | 1,000,000 | .5 | 500,000 | 200,000,000 | .25 | 833,333 | 1,333,333 |
| Appraisal notices | 20,000 | .5 | 10,000 | 4,500,000 | .25 | 18,750 | 28,750 |
| Appraisal reports | 20,000 | .5 | 10,000 | 4,500,000 | .25 | 18,750 | 28,750 |
| Self-test disclosures | 2,500 | .5 | 1,250 | 125,000 | .25 | 521 | 1,771 |
| Total | | | | | | | 1,975,937 |

[1] With respect to appraisal notices and appraisal reports, the above figures reflect a decrease in applicable mortgage entities. The figures assume that approximately half of those entities (.5 x 40,000, or 20,000 businesses) would not otherwise provide this information and thus would be affected. The figures also assume that all applicable entities would provide notices first and thereafter provide the reports upon request.

[2] The above figures reflect a decrease in mortgage transactions compared to prior FTC estimates. They assume that half of applicable mortgage transactions (.5 x 9,000,000, or 4,500,000) would not otherwise provide the appraisal notices and reports and thus would be affected.

**Estimated annual cost burden:** $83,456,633 rounded to the nearest thousand ($22,005,000 recordkeeping cost + $61,451,633 disclosure cost)

FTC staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($41 for managerial or professional time, $30 for skilled technical time, and $16 for clerical time) are averages, based on the most currently available Bureau of Labor Statistics cost figures posted online.[8]

Recordkeeping: FTC staff estimates that the general recordkeeping responsibility of one hour per creditor would involve approximately 90 percent clerical time and 10 percent skilled technical time. Keeping records of race/national origin, sex, age, and marital status requires an estimated one minute of skilled technical time. Keeping records of the self-test responsibility and of any corrective actions requires an estimated one hour and four hours, respectively, of skilled technical time. As shown in the table below, the total recordkeeping cost is $22,005,000.

[5] Regulation B contains model forms that creditors may use to gather and retain the required information.

[6] The decrease in credit applications relative to prior FTC estimates is based on industry data regarding the approximate number of mortgage purchase and refinance originations.

[7] The disclosure may be provided orally or in writing. Regulation B provides a model form to assist creditors in providing the written disclosure.

[8] *http://www.bls.gov/ncs/ncswage2007.htm* (National Compensation Survey: Occupational Earnings in the United States 2007, US Department of Labor released August 2008, Bulletin 2704, Table 3 (''Full-time civilian workers,'' mean and median hourly wages).

Disclosure: For each notice or information item listed, FTC staff estimates that the burden hours consist of 10 percent managerial time and 90 percent skilled technical time. As shown below, the total disclosure cost is $61,451,633.

REGULATION B: RECORDKEEPING AND DISCLOSURES—COST

| Required Task | Managerial Time (hours) | Managerial Cost ($41/hr.) | Skilled Technical Time (hours) | Skilled Technical Cost ($30/hr.) | Clerical Time (hours) | Clerical Cost ($16/hr.) | Total Cost ($) |
|---|---|---|---|---|---|---|---|
| General recordkeeping | 0 | $0 | 100,000 | $3,000,000 | 900,000 | $14,400,000 | $17,400,000 |
| Other recordkeeping | 0 | $0 | 150,000 | $4,500,000 | 0 | $0 | $4,500,000 |
| Recordkeeping of test | 0 | $0 | 2,500 | $75,000 | 0 | $0 | $75,000 |
| Recordkeeping of corrective action | 0 | $0 | 1,000 | $30,000 | 0 | $0 | $30,000 |
| Total Recordkeeping | | | | | | | $22,005,000 |
| Credit history reporting | 58,333 | $2,391,653 | 525,000 | $15,750,000 | 0 | $0 | $18,141,653 |
| Adverse action notices | 133,333 | $5,466,653 | 1,200,000 | $36,000,000 | 0 | $0 | $41,466,653 |
| Appraisal notices | 2,875 | $117,875 | 25,875 | $776,250 | 0 | $0 | $894,125 |
| Appraisal reports | 2,875 | $117,875 | 25,875 | $776,250 | 0 | $0 | $894,125 |
| Self-test disclosure | 177 | $7,257 | 1,594 | $47,820 | 0 | $0 | $55,077 |
| Total Disclosures | | | | | | | $61,451,633 |
| Total Recordkeeping and Disclosures | | | | | | | $83,456,633 |

**2. Regulation E**

The EFTA requires accurate disclosure of the costs, terms, and rights relating to EFT services provided to consumers. The FRB promulgated Regulation E, 12 CFR 205, to implement the EFTA. Regulation E establishes disclosure requirements to assist consumers and establishes recordkeeping requirements to assist in enforcing the EFTA. The FTC enforces the EFTA as to all entities providing EFT services, except those (such as federally chartered or insured depository institutions) that are subject to the regulatory authority of another federal agency.

**Estimated annual hours burden:** 3,731,342 hours (600,000 recordkeeping hours + approximately 3,131,342 disclosure hours)

Recordkeeping: FTC staff estimates that Regulation E's recordkeeping requirements affect 600,000 firms within the Commission's jurisdiction that offer EFT services to consumers, at an average annual burden of one hour per firm, for a total of 600,000 hours.

Disclosure: Regulation E applies to financial institutions (including certain retailers and various payees engaged in electronic commerce), service providers, various federal and state agencies offering EFTs, and others. Below is FTC staff's best estimate of burden applicable to this very broad spectrum of covered entities.

REGULATION E: DISCLOSURES—BURDEN HOURS

| Disclosures[1] | Setup/Monitoring Respondents | Setup/Monitoring Average Burden per Respondent (hours) | Setup/Monitoring Total Setup/Monitoring Burden (hours) | Transaction-related Number of Transactions | Transaction-related Average Burden per Transaction (minutes) | Transaction-related Total Transaction Burden (hours) | Total Burden (hours) |
|---|---|---|---|---|---|---|---|
| Initial terms | 100,000 | .5 | 50,000 | 1,000,000 | .02 | 333 | 50,333 |
| Change in terms | 25,000 | .5 | 12,500 | 33,000,000 | .02 | 11,000 | 23,500 |
| Periodic statements | 100,000 | .5 | 50,000 | 1,200,000,000 | .02 | 400,000 | 450,000 |
| Error resolution | 100,000 | .5 | 50,000 | 1,000,000 | 5 | 83,333 | 133,333 |
| Transaction receipts[2] | 100,000 | .5 | 50,000 | 5,000,000,000 | .02 | 1,666,667 | 1,716,667 |
| Preauthorized transfers | 500,000 | .5 | 250,000 | 1,000,000 | .25 | 4,167 | 254,167 |
| Service provider notices | 100,000 | .25 | 25,000 | 1,000,000 | .25 | 4,167 | 29,167 |
| Govt. benefit notices | 10,000 | .5 | 5,000 | 100,000,000 | .25 | 416,667 | 421,667 |
| ATM[3] | 500 | .25 | 125 | 250,000 | .25 | 1,041 | 1,166 |
| Electronic check conversion[4] | 100,000 | .5 | 50,000 | 3,500,000 | .02 | 1,167 | 51,167 |
| Payroll cards[5] | 100 | .5 | 50 | 2,500 | 3 | 125 | 175 |
| Total | | | | | | | 3,131,342 |

[1] This reflects an increase in entities offering EFT services to consumers.

[2] Regulation E now exempts EFTs of $15 or less from receipt requirements, which could decrease the burden of providing transaction receipts. However, use of the exemption could involve reprogramming costs. Due to the relatively recent change, the burden associated with transaction receipts has not been changed.

[3] Regulation E now permits ATM operators that do not charge fees for services in all circumstances to disclose on signs that a fee "may" (rather than "will") be charged. However, making this change would require replacing existing signage, which could increase disclosure burden. Due to the relatively recent change and its voluntary nature, the burden associated with ATM notice has not been revised.

[4] Regulation E now includes requirements for electronic check conversion.

[5] Regulation E now includes requirements for payroll cards.

**Estimated annual cost burden:** $107,825,124, rounded to the nearest thousand ($10,440,000 recordkeeping cost + $97,385,124 disclosure cost)

FTC staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($41 for managerial or professional time, $30 for skilled technical time, and $16 for clerical time) are averages, based on current Bureau of Labor Statistics cost figures.[9]

Recordkeeping: For the 600,000 recordkeeping hours, FTC staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown below, the total recordkeeping cost is $10,440,000.

Disclosure: For each notice or information item listed, FTC staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown below, the total disclosure cost is $97,385,124.

REGULATION E: RECORDKEEPING AND DISCLOSURES—COST

| Required Task | Managerial | | Skilled Technical | | Clerical | | Total Cost ($) |
|---|---|---|---|---|---|---|---|
| | Time (hours) | Cost ($41/hr.) | Time (hours) | Cost ($30/hr.) | Time (hours) | Cost ($16/hr.) | |
| Recordkeeping | 0 | $0 | 60,000 | $1,800,000 | 540,000 | $8,640,000 | $10,440,000 |
| Disclosures: | | | | | | | |
| Initial terms | 5,033 | $206,353 | 45,300 | $1,359,000 | 0 | $0 | $1,565,353 |
| Change in terms | 2,350 | $96,350 | 21,150 | $634,500 | 0 | $0 | $730,850 |
| Periodic statements | 45,000 | $1,845,000 | 405,000 | $12,150,000 | 0 | $0 | $13,995,000 |
| Error resolution | 13,333 | $546,653 | 120,000 | $3,600,000 | 0 | $0 | $4,146,653 |
| Transaction receipts | 171,667 | $7,038,347 | 1,545,000 | $46,350,000 | 0 | $0 | $53,388,347 |
| Preauthorized transfers | 25,417 | $1,042,097 | 228,750 | $6,826,500 | 0 | $0 | $7,904,597 |
| Service provider notices | 2,917 | $119,597 | 26,250 | $787,500 | 0 | $0 | $907,097 |
| Govt. benefit notices | 42,167 | $1,728,874 | 379,500 | $11,385,000 | 0 | $0 | $13,113,874 |
| ATM notices | 116 | $4,756 | 1,050 | $31,500 | 0 | $0 | $36,256 |
| Electronic check conversion | 5,117 | $209,797 | 46,050 | $1,381,500 | 0 | $0 | $1,591,297 |
| Payroll cards | 50 | $2,050 | 125 | $3,750 | 0 | $0 | $5,800 |
| Total Disclosures | | | | | | | $97,385,124 |
| Total Recordkeeping and Disclosures | | | | | | | $107,825,124 |

**3. Regulation M**

The CLA requires accurate disclosure of the costs and terms of leases to consumers. The FRB promulgated Regulation M, 12 CFR 213, to implement the CLA. Regulation M establishes disclosure requirements that assist consumers in comparison shopping and in understanding the terms of leases and recordkeeping requirements that assist enforcement of the CLA. The FTC enforces the CLA as to all lessors and advertisers except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

**Estimated annual hours burden:** 225,000 hours, rounded to the nearest thousand (120,000 recordkeeping hours + 104,875 disclosure hours)

Recordkeeping: FTC staff estimates that Regulation M's recordkeeping requirements affect approximately 120,000 firms within the Commission's jurisdiction that lease products to consumers, at an average annual burden of one hour per firm, for a total of 120,000 hours.

Disclosure: Regulation M applies to automobile lessors (such as auto dealers, independent leasing companies, and manufacturers' captive finance companies), computer lessors (such as computer dealers and other retailers), furniture lessors, various electronic commerce lessors, diverse types of lease advertisers, and others. Below is FTC staff's best estimate of burden applicable to the wide spectrum of these entities within the FTC's jurisdiction.

[9] *See* note 8.

REGULATION M: DISCLOSURES—BURDEN HOURS

| | Setup/Monitoring | | | Transaction-related | | | |
|---|---|---|---|---|---|---|---|
| Disclosures | Respondents | Average Burden per Respondent (hours) | Total Setup/ Monitoring Burden (hours) | Number of Transactions | Average Burden per Transaction (minutes) | Total Transaction Burden (hours) | Total Burden (hours) |
| Auto Leases[1] | 45,000 | .75 | 33,750 | 2,000,000 | .50 | 16,667 | 50,417 |
| Other Leases[2] | 75,000 | .50 | 37,500 | 750,000 | .25 | 3,125 | 40,625 |
| Advertising | 20,000 | .50 | 10,500 | 800,000 | .25 | 3,333 | 13,833 |
| Total | | | | | | | 104,875 |

[1] This category focuses on consumer vehicle leases. Vehicle leases are subject to more lease disclosure requirements (pertaining to computation of payment obligations) than other lease transactions. (Only consumer leases for more than four months are covered.) *See* 15 U.S.C. 1667(1); 12 CFR 213.2(e)(1). This reflects a decrease in auto leasing entities and transactions, relative to prior FTC estimates.

[2] This category focuses on all types of consumer leases other than vehicle leases. It includes leases for computers, other electronics, small appliances, furniture, and other transactions. (Only consumers leases for more than four months are covered.) *See* 15 U.S.C. 1667(1); 12 CFR 213.2(e)(1). This reflects a decrease in consumer leasing entities and transactions, relative to prior FTC estimates.

**Estimated annual cost burden:** $5,349,618, rounded to the nearest thousand ($2,088,000 recordkeeping cost + $3,261,618 disclosure cost)

FTC staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($41 for managerial or professional time, $30 for skilled technical time, and $16 for clerical time) are averages, based on current Bureau of Labor Statistics cost figures.[10]

Recordkeeping: For the 120,000 recordkeeping hours, FTC staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown in the table below, the total recordkeeping cost is $2,088,000.

Disclosure: For each notice or information item listed, FTC staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown in the table below, the total disclosure cost is $3,261,618.

REGULATION M: RECORDKEEPING AND DISCLOSURES—COST

| | Managerial | | Skilled Technical | | Clerical | | Total Cost ($) |
|---|---|---|---|---|---|---|---|
| Required Task | Time (hours) | Cost ($41/hr.) | Time (hours) | Cost ($30/hr.) | Time (hours) | Cost ($16/hr.) | |
| Recordkeeping | 0 | $0 | 12,000 | $360,000 | 108,000 | $1,728,000 | $2,088,000 |
| Disclosures | | | | | | | |
| Auto Leases | 5,042 | $206,722 | 45,375 | $1,361,250 | 0 | $0 | $1,567,972 |
| Other Leases | 4,063 | $166,583 | 36,562 | $1,096,860 | 0 | $0 | $1,263,443 |
| Advertising | 1,383 | $56,703 | 12,450 | $373,500 | 0 | $0 | $430,203 |
| Total Disclosures | | | | | | | $3,261,618 |
| Total Recordkeeping and Disclosures | | | | | | | $5,349,618 |

**4. Regulation Z**

The TILA was enacted to foster comparison credit shopping and informed credit decision making by requiring creditors and others to provide accurate disclosure of the costs and terms of credit to consumers. The FRB promulgated Regulation Z, 12 CFR 226, to implement the TILA. Regulation Z establishes disclosure requirements to assist consumers and recordkeeping requirements to assist enforcement of the TILA. The FTC enforces the TILA as to all creditors and advertisers except those that are subject to the regulatory authority of another federal agency (such as federally chartered or insured depository institutions).

**Estimated annual hours burden:** 12,415,413 hours, rounded to the nearest thousand (1,000,000 recordkeeping hours + 11,415,413 disclosure hours)

Recordkeeping: FTC staff estimates that Regulation Z's recordkeeping requirements affect approximately 1,000,000 firms within the Commission's jurisdiction that offer credit, at an average annual burden of one hour per firm, for a total of 1,000,000 hours.

Disclosure: Regulation Z disclosure requirements pertain to open-end and closed-end credit. The Regulation applies to various types of entities, including mortgage companies; finance companies; auto dealerships; student loan companies; merchants who extend credit for goods or services, credit advertisers; and others. Below is FTC staff's best estimate of burden applicable to the wide spectrum of these entities within the FTC's jurisdiction.

[10] *See* note 8.

REGULATION Z: DISCLOSURES—BURDEN HOURS

| | Setup/Monitoring | | | Transaction-related | | | |
|---|---|---|---|---|---|---|---|
| Disclosures[1] | Respondents | Average Burden per Respondent (hours) | Total Setup/ Monitoring Burden (hours) | Number of Transactions | Average Burden per Transaction (minutes) | Total Transaction Burden (hours) | Total Burden (hours) |
| Open-end credit: | | | | | | | |
| Initial terms | 90,000 | .5 | 45,000 | 40,000,000 | .25 | 166,666 | 211,666 |
| Rescission notices | 7,500 | .5 | 3,750 | 400,000 | .25 | 1,666 | 5,416 |
| Change in terms | 20,000 | .5 | 10,000 | 125,000,000 | .125 | 260,416 | 270,416 |
| Periodic statements | 90,000 | .5 | 45,000 | 3,500,000,000 | .0625 | 3,645,833 | 3,690,833 |
| Error resolution | 90,000 | .5 | 45,000 | 8,000,000 | 5 | 666,666 | 711,666 |
| Credit and charge card accounts | 50,000 | .5 | 25,000 | 25,000,000 | .25 | 104,166 | 129,166 |
| Home equity lines of credit | 7,500 | .5 | 3,750 | 3,500,000 | .25 | 14,583 | 18,333 |
| Advertising | 200,000 | .5 | 100,000 | 600,000 | .5 | 5,000 | 105,000 |
| Closed-end credit: | | | | | | | |
| Credit disclosures | 700,000 | .5 | 350,000 | 200,000,000 | 1.5 | 5,000,000 | 5,350,000 |
| Rescission notices | 75,000 | .5 | 37,500 | 30,000,000 | 1 | 500,000 | 537,500 |
| Variable rate mortgages | 70,000 | .5 | 35,000 | 2,000,000 | 1.5 | 50,000 | 85,000 |
| High rate/high-fee mortgages | 40,000 | .5 | 20,000 | 500,000 | 1.5 | 12,500 | 32,500 |
| Reverse mortgages | 50,000 | .5 | 25,000 | 175,000 | 1 | 2,917 | 27,917 |
| Advertising[2] | 450,000 | .5 | 225,000 | 900,000 | 1 | 15,000 | 240,000 |
| Total open-end credit | | | | | | | 5,142,496 |
| Total closed-end credit | | | | | | | 6,272,917 |
| Total credit | | | | | | | 11,415,413 |

[1] Generally, open-end and closed-end entities and transactions have decreased, but reverse mortgages have increased, relative to prior FTC estimates.

[2] Advertising time for setup for open-end and closed-end mortgage transactions is estimated to increase based on new rules effective October 1, 2009, but the number of transactions have decreased, relative to prior FTC estimates.

**Estimated annual cost burden:** $372,419,363, rounded to the nearest thousand ($17,400,000 recordkeeping cost + $355,019,363 disclosure cost)

FTC staff calculated labor costs by applying appropriate hourly cost figures to the burden hours described above. The hourly rates used below ($41 for managerial or professional time, $30 for skilled technical time, and $16 for clerical time) are averages, based on current Bureau of Labor Statistics cost figures.[2]

Recordkeeping: For the 1,000,000 recordkeeping hours, FTC staff estimates that 10 percent of the burden hours require skilled technical time and 90 percent require clerical time. As shown in the table below, the total recordkeeping cost is $17,400,000.

Disclosure: For each notice or information item listed, FTC staff estimates that 10 percent of the burden hours require managerial time and 90 percent require skilled technical time. As shown in the table below, the total disclosure cost is $355,019,363.

REGULATION Z: RECORDKEEPING AND DISCLOSURES—COST

| | Managerial | | Skilled Technical | | Clerical | | Total Cost ($) |
|---|---|---|---|---|---|---|---|
| Required Task | Time (hours) | Cost ($41/hr.) | Time (hours) | Cost ($30/hr.) | Time (hours) | Cost ($16/hr.) | |
| Recordkeeping | 0 | $0 | 100,000 | $3,000,000 | 900,000 | $14,400,000 | $17,400,000 |
| Open-end credit Disclosures: | | | | | | | |
| Initial terms | 21,167 | $867,847 | 190,499 | $5,714,970 | 0 | $0 | $6,582,817 |
| Rescission notices | 542 | $22,222 | 4,874 | $146,220 | 0 | $0 | $168,442 |
| Change in terms | 27,042 | $1,108,722 | 243,374 | $7,301,220 | 0 | $0 | $8,409,942 |
| Periodic statements | 369,083 | $15,132,403 | 3,321,750 | $99,652,500 | 0 | $0 | $114,784,903 |
| Error resolution | 71,167 | $2,917,847 | 640,499 | $19,214,970 | 0 | $0 | $22,132,817 |
| Credit and charge card accounts | 12,917 | $529,597 | 116,249 | $3,487,470 | 0 | $0 | $4,017,067 |
| Home equity lines of credit | 1,833 | $75,153 | 16,500 | $495,000 | 0 | $0 | $570,153 |
| Advertising | 10,500 | $430,500 | 94,500 | $2,835,000 | 0 | $0 | $3,265,500 |

[2] *See* note 8.

REGULATION Z: RECORDKEEPING AND DISCLOSURES—COST—Continued

| Required Task | Managerial Time (hours) | Managerial Cost ($41/hr.) | Skilled Technical Time (hours) | Skilled Technical Cost ($30/hr.) | Clerical Time (hours) | Clerical Cost ($16/hr.) | Total Cost ($) |
|---|---|---|---|---|---|---|---|
| Total open-end credit | | | | | | | $159,931,641 |
| Closed-end credit Disclosures: | | | | | | | |
| Credit disclosures | 535,000 | $21,935,000 | 4,815,000 | $144,450,000 | 0 | $0 | $166,385,000 |
| Rescission notices | 53,750 | $2,203,750 | 483,750 | $14,512,500 | 0 | $0 | $16,716,250 |
| Variable rate mortgages | 8,500 | $348,500 | 76,500 | $2,295,000 | 0 | $0 | $2,643,500 |
| High-rate/high-fee mortgages | 3,250 | $133,250 | 29,250 | $877,500 | 0 | $0 | $1,010,750 |
| Reverse mortgages | 2,792 | $114,472 | 25,125 | $753,750 | 0 | $0 | $868,222 |
| Advertising | 24,000 | $984,000 | 216,000 | $6,480,000 | 0 | $0 | $7,464,000 |
| Total closed-end credit | | | | | | | $195,087,722 |
| Total Disclosures | | | | | | | $355,019,363 |
| Total Recordkeeping and Disclosures | | | | | | | $372,419,363 |

**David C. Shonka,**

*Acting General Counsel.*

[FR Doc. E9–5113 Filed 3–10–09: 8:45 am]

**BILLING CODE 6750–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60 Day–09–08AG]**

### 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 Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Formative Research and Tool Development—New—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

CDC previously published a clearance mechanism to support behavioral projects for HIV/ AIDS prevention and control (**Federal Register**, volume 73, number 33 page 492 January 3, 2008). This project has been expanded to include formative research, and instrument testing for, sexually transmitted infections (STI), viral hepatitis, and tuberculosis elimination.

Formative research is the basis for developing effective strategies including communication channels, for influencing behavior change. It helps researchers identify and understand the characteristics—interests, behaviors and needs—of target populations that influence their decisions and actions. Formative research is integral in developing programs as well as improving existing and ongoing programs. Formative research also looks at the community in which an intervention is being or planning to be implemented and helps the project staff understand the interests, attributes and needs of different populations and persons in their community. Formative research is research that occurs before a program is designed and implemented, or while a program is being conducted. Formative research is an integral part of developing programs or adapting programs that deal with the complexity of behaviors, social context, cultural identities, and health care that underlie the epidemiology of HIV/AIDS, viral hepatitis, STDs, and TB in the U.S.

CDC conducts formative research to develop public-sensitive communication messages and user-friendly tools prior to developing or recommending interventions, or care. Sometimes these studies are entirely behavioral but most often they are cycles of interviews and focus groups designed to inform the formation of a product.

Products from these studies will be used for sustainable projects for HIV/ AIDS, Sexually Transmitted Infections (STI), viral Hepatitis, and Tuberculosis prevention that are presented as evidence to disease specific National Advisory Committees, in order to support revisions to existing prevention and intervention methods, and new recommendations which cannot be developed without formative research.

Much of CDC's health communication takes place within campaigns that have fairly lengthy planning periods—timeframes that accommodate the standard Federal process for approving data collections. Short term qualitative interviewing and cognitive research techniques have previously proven invaluable in the development of scientifically valid and population-

appropriate methods, interventions, and instruments.

This request includes studies investigating the utility and acceptability of proposed recruitment methods, intervention contents and delivery, questionnaire domains, individual questions, and interactions with project staff or electronic data collection equipment. These activities will also provide information about how respondents answer questions and ways in which question response bias and error can be reduced. Overall, these development activities are intended to provide information that will increase the success of the surveillance or research project through increasing response rates and decreasing response error thereby decreasing future data collection burden to the public. The studies that will be covered under this request will include one or more of the following investigational modalities: (1) Focus group and individual interviews; (2) cognitive interviews for development and testing of specific data collection instruments; (3) component testing of instruments developed from qualitative research or communication methods; (4) testing of behavioral interventions; (5) public acceptance of intervention and prevention methods; (6) utilizing computer-assisted instruments (including Web-based technology).

Respondents who will participate in individual and group interviews (qualitative, cognitive, and computer-assisted development activities) are selected purposely from those who respond to recruitment advertisements. In addition to utilizing advertisements for recruitment, respondents who will participate in research on survey methods may be selected purposively or systematically from within an ongoing surveillance or research project.

CDC estimates that in a given year, 46,529 individuals will participate in 10 different information collection activities each year, each lasting between 6–12 months.

Participation of respondents is voluntary and there is no cost to the respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

| Type of respondent | Form name | Number of respondents | Number of responses per respondent | Average hours per response | Total response burden (hrs) |
|---|---|---|---|---|---|
| General public and health care providers | Screener | 81200 | 1 | 10/60 | 13533 |
| General public and health care providers | Consent Forms | 40600 | 1 | 5/60 | 3383 |
| General public and health care providers | Individual interview | 6600 | 1 | 1 | 6600 |
| General public and health care providers | Group interview | 4000 | 1 | 2 | 8000 |
| General public and health care providers | Individual Survey | 30000 | 1 | 30/60 | 15000 |
| Total | | | | | 46517 |

Dated: March 3, 2009.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–5103 Filed 3–10–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60 Day–09–0134]**

### 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. Alternatively, to obtain a copy of the data collection plans and instrument, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Reports Clearance Officer, 1600 Clifton Road, NE., MS–D74, Atlanta, Georgia 30333; comments may also be sent by 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 a 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 clarify 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 information technology. Written comments should be received within 60 days of this notice.

**Proposed Project**

Foreign Quarantine Regulations (42 CFR part 71), (OMB Control No. 0920–0134)—Extension—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

Section 301 of the Public Health Service Act (PHSA) (42 U.S.C. 264) authorizes the Secretary of Health and Human Services (HHS) to make and enforce regulations necessary to prevent the introduction, transmission, or spread of communicable diseases into the United States. Legislation and existing regulations governing the foreign quarantine activities (42 CFR part 71) authorize quarantine officers and other personnel to inspect and undertake necessary control measures with respect to conveyances, persons, and shipments of animals and etiologic agents entering the United States from foreign ports in order to protect the public's health.

Under the foreign quarantine regulations, the master of a ship or captain of an airplane entering he United States from a foreign port is required by public health law to report certain illnesses among passengers (42 CFR 71.21 (b)). In addition to the aforementioned list of illnesses which must be reported to CDC, the master of a ship or captain of an airplane must also report (1) hemorrhagic Fever Syndrome (persistent fever accompanied by abnormal bleeding from any site); or (2) acute respiratory syndrome (severe cough or severe respiratory disease of less than 3 weeks in duration); or (3) acute onset of fever and severe headache, accompanied by stiff neck or change in level of consciousness. CDC has the authority to collect personnel health information to

protect the health of the public under the authority of section 301 of the Public Health Service Act (42 U.S.C.).

This information collection request also includes the Passenger Locator Information Form. The Passenger Locator Information Form is used to collect reliable information that assists quarantine officers in locating, in a timely manner, those passengers and crew who are exposed to communicable diseases of public health significance while traveling on a conveyance. HHS delegates authority to CDC to conduct quarantine control measures. Currently, with the exception of rodent inspections and the cruise ship sanitation program, inspections are performed only on those vessels and aircraft which report illness prior to arrival or when illness is discovered upon arrival. Other inspection agencies assist quarantine officers in public health screening of persons, pets, and other importations of public health significance and make referrals to the Public Health Service when indicated. These practices and procedures assure protection against the introduction and spread of communicable diseases into the United States with a minimum of recordkeeping and reporting as well as a minimum of interference with trade and travel.

Respondents include airline pilots, ships' captains, importers, and travelers. The nature of the quarantine response dictates which forms are completed by whom.

There are no costs to respondents except for their time to complete the forms.

ESTIMATE OF ANNUALIZED BURDEN HOURS

| Citation | Number of respondents | Number of responses per respondent | Average burden per respondent (in hours) | Total burden |
|---|---|---|---|---|
| 71.21 Radio Report of death/illness | 9,500 | 1 | 2/60 | 317 |
| 71.33(c) Report by persons in isolation or surveillance | 11 | 1 | 3/60 | 1 |
| 71.35 Report of death/illness in port | 5 | 1 | 30/60 | 3 |
| Locator Form used in an outbreak of public health significance | 2,700,000 | 1 | 5/60 | 225,000 |
| Locator Form used for reporting of an ill passenger(s) | 800 | 1 | 5/60 | 67 |
| 71.51(b)(3) Admission of cats/dogs; death/illness | 5 | 1 | 3/60 | 1 |
| 71.51(d) Dogs/cats: Certification of Confinement, Vaccination | 1,200 | 1 | 15/60 | 300 |
| 71.52(d) Turtle Importation Permits | 10 | 1 | 30/60 | 5 |
| 71.53(d) Importer Registration—Nonhuman Primates | 40 | 1 | 10/60 | 7 |
| 71.53(e) Recordkeeping | 30 | 4 | 30/60 | 60 |
| Total | ..... | ..... | ..... | 225,761 |

Dated: March 3, 2009.

**Maryam I. Daneshvar,**

*Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. E9–5116 Filed 3–10–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, National Center for Health Statistics: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Center for Health Statistics, Department of Health and Human Services, has been renewed for a 2-year period through January 19, 2011.

For information, contact Virginia Cain, Ph.D., Executive Secretary, Board of Scientific Counselors, National Center for Health Statistics, Department of Health and Human Services, 3311 Toledo Road, Room 7204, Mailstop P08, Hyattsville, Maryland 20782, telephone 301/458–4395 or fax 301/458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 3, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E9–5152 Filed 3–10–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Data Coordinating Center for Autism and Other Development Disabilities Research, Program Announcement Number (PA) DD09–002; Epidemiologic and Surveillance and Epidemiologic Research of Duchenne and Becker Muscular Dystrophy, PA DD06–002

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

*Time and Date:* 1 p.m.–4 p.m., March 26, 2009 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters to be Discussed:* The meeting will include the review, discussion, and evaluation of the application received in response to ''Data Coordinating Center for Autism and Other Development Disabilities

Research, PA DD09–002; and the supplements received for Epidemiologic and Surveillance and Epidemiologic Research of Duchenne and Becker Muscular Dystrophy, PA DD06–002.''

*For Further Information Contact:* Geneva L. Cashaw, Designated Federal Official, CDC, 4770 Buford Highway, NE., Mailstop K–92, Telephone (770) 488–8390.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 4, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E9–5117 Filed 3–10–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Injury Control Research Centers, CE09–001

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

*Time and Date:* 9 a.m.–12 p.m., March 30, 2009 (Closed).

*Place:* Teleconference.

*Status:* The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

*Matters To Be Discussed:* The meeting will include the secondary review of applications received in response to Funding Opportunity Announcement, CE09–001, Grants for Injury Control Research Centers.

*For Further Information Contact:* Gwendolyn Cattledge, Ph.D., Deputy Associate Director for Science, NCIPC, CDC, 4770 Buford Highway, NE., MS F–62, Atlanta, GA 30341, Telephone (770) 488–4665.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: March 2, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E9–5157 Filed 3–10–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Center for Injury Prevention and Control Initial Review Group (NCIPC, IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following meeting:

*Times and Date:* 8:30 a.m.–9 a.m., April 2, 2009 (Open). 9 a.m.–6 p.m., April 2, 2009 (Closed).

*Place:* Embassy Suites of Buckhead, 3285 Peachtree Road, Atlanta, GA 30305, telephone: (404) 261–7733.

*Status:* Portions of the meetings will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to section 10(d) of Public Law 92–463.

*Purpose:* This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

*Matters To Be Discussed:* The meeting will include the review, discussion, and evaluation of individual research grant applications submitted in response to Fiscal Year 2009 Requests for Applications related to the following individual research announcement: RFA–CE–09–004 ''Unintentional Poisoning from Prescription Drug Overdose in Adults (R21).''

Agenda items are subject to change as priorities dictate.

*For Further Information Contact:* Jane Suen, Dr.P.H., NCIPC, CDC, 4770 Buford Highway, NE., Mailstop F–62, Atlanta, Georgia 30341, telephone: (770) 488–4281; fax: (770) 488–4422.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: February 26, 2009.

**Elaine L. Baker,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. E9–5156 Filed 3–10–09; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

#### Proposed Projects

*Title:* State Plan for Foster Care and Adoption Assistance—Title IV–E.

*OMB No.:* 0980–0141.

*Description:* A title IV–E plan is required by section 471 part IV–E of the Social Security Act (the Act) for each public child welfare agency requesting Federal funding for foster care, adoption assistance and guardianship assistance under the Act. The title IV–E plan provides assurances the programs will be administered in conformity with the specific requirements stipulated in title IV–E. The plan must include all applicable State statutory, regulatory, or policy references and citations for each requirement as well as supporting documentation. A title IV–E agency may use the pre-print format prepared by the Children's Bureau of the Administration for Children and Families or a different format, on the condition that the format used includes all of the title IV–E State plan requirements of the law.

Public Law 110–351, the Fostering Connections to Success and Increasing Adoptions Act of 2008, created a new title IV–E plan option to provide a Guardianship Assistance Program for relatives of children in foster care (section 471(a)(28) of the Act). The Guardianship Assistance program was made effective for States upon enactment of Public Law 110–351 (October 7, 2008).

Effective October 1, 2009, Public Law 110–351 will allow Tribes, Tribal organizations and Tribal consortia to directly operate title IV–E programs for foster care maintenance payments, adoption assistance and kinship guardianship assistance.

The law also made a number of other changes to title IV–E plan requirements and eligibility criteria. The law's provisions expanding the scope of the title IV–E program necessitates a revision of the preprint.

*Respondents:* State and Territorial Agencies (State Agencies) administering

or supervising the administration of the title IV–E programs and Federally-recognized Tribes, Tribal organizations and Tribal consortia administering title IV–E programs.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| Title IV–E Plan | 33 | 1 | 16 | 528 |

*Estimated Total Annual Burden Hours:* 528.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 6, 2009.

**Janean Chambers,**

*Reports Clearance Officer.*

[FR Doc. E9–5196 Filed 3–10–09; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

### Proposed Projects

*Title:* Annual Survey of Refugees (Form ORR–9).

*OMB No.:* 0970–0033.

*Description:* The Annual Survey of Refugees collects information on the social and economic circumstances of a random sample of refugees, Amerasians, and entrants who arrived in the United States in the five years prior to the date of the survey. The survey focuses on the refugees training, labor force participation, and welfare utilization rates. Dates are segmented by region of origin, State of resettlement, and number of months since arrival. From the responses, the Office of Refugee Resettlement reports on the economic adjustment of refugees to the American economy. These data are used by Congress in its annual deliberations or refugee admissions and funding and by program managers in formulating policies for the future direction of the Refugee Resettlement Program.

*Respondents:* Refugees, entrants, Amerasians, and Havana parolees.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ORR–9 | 2,000 | 1 | 0.67 | 1,333.33 |

*Estimated Total Annual Burden Hours:* 1,333.33.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 6, 2009.

**Janean Chambers,**

*Reports Clearance Officer.*

[FR Doc. E9–5200 Filed 3–10–09; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2008–N–0572]**

### Agency Information Collection Activities; Proposed Collection; Comment Request; Implementation of the Animal Generic Drug User Fee Act of 2008; User Fee Cover Sheet Form FDA 3728

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the Animal Generic Drug User Fee Cover Sheet Form FDA 3728 that further implements certain provisions of the Animal Generic Drug User Fee Act of 2008 (AGDUFA).

**DATES:** Submit written or electronic comments on the collection of information by May 11, 2009.

**ADDRESSES:** Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Implementation of the Animal Generic Drug User Fee Act of 2008; User Fee Cover Sheet Form FDA 3728—21 U.S.C. 379j-21—(OMB Control Number 0910–0632)—Extension**

This collection of information is currently approved under the emergency processing provisions of the PRA of 1995 for 90 days. FDA is now seeking a 3-year clearance.

Section 741 of the act (21 U.S.C. 379j-21), establishes three different kinds of user fees: (1) Fees for certain types of abbreviated applications for generic new animal drugs, (2) annual fees for certain generic new animal drug products, and (3) annual fees for certain sponsors of abbreviated applications for generic new animal drugs and/or investigational submissions for generic new animal drugs. Because the submission of user fees concurrently with applications is required, the review of an application cannot begin until the fee is submitted. Form FDA 3728, the Animal Generic Drug User Fee Cover Sheet, is designed to provide the minimum necessary information in order to: (1) Determine whether a fee is required for review of an application, (2) determine the amount of fee required, and (3) account for and track user fees.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 U.S.C. 379j-21 | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| Form FDA 3728 | 20 | 2 | 40 | .08 | 3.2 |

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Respondents to this collection of information are generic animal drug applicants. Based on FDA's data base system, there are an estimated 20 sponsors of new animal drugs potentially subject to AGDUFA.

Dated: March 4, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–5107 Filed 3–10–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2007–E–0462]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; CERENIA INJECTABLE SOLUTION

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for CERENIA INJECTABLE SOLUTION and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product CERENIA INJECTABLE SOLUTION (maropitant). CERENIA INJECTABLE SOLUTION is indicated for the prevention and treatment of acute vomiting in dogs. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CERENIA INJECTABLE SOLUTION (U.S. Patent No. 6,222,038) from Pfizer Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 6, 2008, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of CERENIA INJECTABLE SOLUTION represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CERENIA INJECTABLE SOLUTION is 1,887 days. Of this time, 1,841 days occurred during the testing phase of the regulatory review period, while 46 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective*: December 1, 2001. The applicant claims June 28, 2000, as the date the investigational new animal drug application (INAD) became effective. However, the date that a major health or environmental effects test is begun or the date on which the agency acknowledges the filing of a notice of claimed investigational exemption for a new animal drug, whichever is earlier, is the effective date for the INAD. According to FDA records, December 1, 2001, is the effective date for the INAD.

2. *The date the application was initially submitted with respect to the animal drug product under section 512 of the Federal Food, Drug, and Cosmetic Act*: December 15, 2006. The applicant claims December 13, 2006, as the date the new animal drug application (NADA) for CERENIA INJECTABLE SOLUTION (NADA 141–263) was initially submitted. However, a review of FDA records reveals that NADA 141–263 was initially submitted on December 15, 2006.

3. *The date the application was approved*: January 29, 2007. FDA has verified the applicant's claim that NADA 141–263 was approved on January 29, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,078 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 11, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 8, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 2009.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E9–5112 Filed 3–10–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2007–E–0230]**

## Determination of Regulatory Review Period for Purposes of Patent Extension; CERENIA TABLETS

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for CERENIA TABLETS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit

electronic comments to *http://www.regulations.gov*.

**FOR FURTHER INFORMATION CONTACT:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for an animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product CERENIA TABLETS (maropitant citrate monohydrate). CERENIA TABLETS is indicated for the prevention of acute vomiting in dogs and the prevention of vomiting due to motion sickness in dogs. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CERENIA TABLETS (U.S. Patent No. 6,255,320) from Pfizer Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 6, 2008, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of CERENIA TABLETS represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CERENIA TABLETS is 1,887 days. Of this time, 1,841 days occurred during the testing phase of the regulatory review period, while 46 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective*: December 1, 2001. The applicant claims November 21, 2000, as the date the investigational new animal drug application (INAD) became effective. However, the date that a major health or environmental effects test is begun or the date on which the agency acknowledges the filing of a notice of claimed investigational exemption for a new animal drug, whichever is earlier, is the effective date for the INAD. According to FDA records, December 1, 2001, is the effective date for the INAD.

2. *The date the application was initially submitted with respect to the animal drug product under section 512 of the Federal Food, Drug, and Cosmetic Act*: December 15, 2006. The applicant claims December 13, 2006, as the date the new animal drug application (NADA) for CERENIA TABLETS (NADA 141–262) was initially submitted. However, a review of FDA records reveals that NADA 141–262 was initially submitted on December 15, 2006.

3. *The date the application was approved*: January 29, 2007. FDA has verified the applicant's claim that NADA 141–262 was approved on January 29, 2007.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 267 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by May 11, 2009. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by September 8, 2009. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 17, 2009.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. E9–5109 Filed 3–10–09; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2009–D–0060]**

### Guidance for Industry: Measures to Address the Risk for Contamination by Salmonella Species in Food Containing a Peanut-Derived Product as an Ingredient; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Guidance for Industry: Measures to Address the Risk for Contamination by *Salmonella* Species in Food Containing a Peanut-Derived Product as an Ingredient.'' This guidance is intended to clarify for manufacturers who produce foods containing a peanut-derived product as an ingredient that there is a risk that *Salmonella* species may be present in the incoming peanut-derived product, and to recommend measures to address that risk.

**DATES:** Submit written or electronic comments on agency guidances at any time.

**ADDRESSES:** Submit written comments on the guidance to the Division of

Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written requests for single copies of the guidance to the Office of Food Safety, Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

**FOR FURTHER INFORMATION CONTACT:** Michael E. Kashtock,Center for Food Safety and Applied Nutrition (HFS–317), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2022.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance entitled ''Guidance for Industry: Measures to Address the Risk for Contamination by *Salmonella* Species in Food Containing a Peanut-Derived Product as an Ingredient.'' This guidance is intended to clarify for manufacturers who produce foods containing a peanut-derived product as an ingredient that there is a risk that *Salmonella* species (spp.) may be present in the incoming peanut-derived product, and to recommend measures to address that risk. Peanut-derived products include peanuts, peanut butter, peanut paste, peanut meal, and peanut granules.

In the recent past, products made from peanuts have been associated with two large, multi-state *Salmonella* outbreaks. The first of these, an outbreak of *Salmonella* Tennessee in 2007 linked to peanut butter, resulted in more than 600 illnesses in 47 states (Ref. 1). More recently, peanut butter and peanut paste have been confirmed as the source of a large multi-state outbreak caused by *Salmonella* Typhimurium (Ref. 2). Peanut-derived products that have been recalled have been used as ingredients in other products such as cookies, crackers, cereal, candy, and ice cream. This had led to additional recalls.

FDA is issuing this guidance as a level 1 guidance consistent with FDA's good guidance practices regulation § 10.115 (21 CFR 10.115). Consistent with FDA's good guidance practices regulation, the agency will accept comment, but is implementing the guidance document immediately in accordance with § 10.115(g)(2) because the agency has determined that prior public participation is not feasible or appropriate in light of the need to respond expeditiously to the current circumstances. The guidance represents the agency's current thinking on measures to address the risk for contamination by *Salmonella* spp. in foods containing a peanut-derived product as an ingredient. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the guidance at *http://www.cfsan.fda.gov/guidance.html*.

## IV. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA, FDA Warns Consumers Not to Eat Certain Jars of Peter Pan Peanut Butter and Great Value Peanut Butter; Product May be Contaminated With *Salmonella*, FDA News, P07–21, available at *http://www.fda.gov/bbs/topics/NEWS/2007/NEW01563.html*, February 14, 2007.

2. FDA, Recall of Products Containing Peanut Butter; *Salmonella* Typhimurium, available at *http://www.fda.gov/oc/opacom/hottopics/salmonellatyph.html*, updated February 4, 2009.

Dated: March 9, 2009.

**Jeffrey Shuren,**

*Associate Commissioner for Policy and Planning.*

[FR Doc. E9–5367 Filed 3–9–09; 4:15 pm]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: Patient Navigator Outreach and Chronic Disease Prevention Demonstration Program Patient Data Collection Form—[New]**

The purpose of the Patient Navigator Outreach and Chronic Disease Prevention (PN) Demonstration Program is to promote model ''patient navigator'' programs to improve health care outcomes for individuals with cancer and/or other chronic diseases, with a specific emphasis on health disparity populations. This program aims to coordinate comprehensive health services for patients in need of chronic disease care and management through enhanced chronic disease management provided by patient navigators.

In order to describe successful PN program models and make recommendations on the ability of such programs to improve patient outcomes, data is needed at the individual patient, patient navigator, and PN program levels. This information includes:

■ Sociodemographics of patients (*e.g.*, insurance status, income, education level, gender, age, race and ethnicity, primary language, number of family dependents) served;

■ Patient access barriers to standard chronic disease care (*e.g.*, access to pharmaceuticals, distance of patient's home from health care facilities utilized, primary mode of transportation to health care facilities utilized, cultural and linguistic barriers as well as literacy levels);

■ Health care service utilization (*e.g.*, screening rates, compliance rate for appointments and follow-up exams,

time interval between diagnosis or referral and resolution date);

■ Patient health status (*e.g.*, type and stage of diagnosis, chronic disease status, final outcome or result); and

■ Patient navigation data (*e.g.*, type of navigator, patient navigation training plans and outcomes, point at which patient navigator was brought into the process, number of patients referred, how patient barriers were resolved, patient satisfaction, follow-up outcomes—such as number of uninsured who get health coverage).

This information will be collected from patients or their designated caregiver, patient navigators, and PN program administrators. Maintaining confidentiality of patient medical information is a concern and thus all personal information will be de-identified to protect the confidentiality of all patients. Data collection and disclosure processes will abide by Health Insurance Portability and Accountability Act (HIPPA) Privacy Rule provisions and procedures.

The annual estimate of burden is as follows:

| Form | Number of respondents | Responses per respondent | Total responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Navigated Patient [1] Data Intake Form | 6000 | 1 | 6000 | 0.5 | 3000 |
| SubTotal—Patient Burden | 6000 | 1 | 6000 | 0.5 | 3000 |
| Patient Navigator Survey | 30 | 1 | 30 | 0.25 | 7.5 |
| Patient Navigator Encounter/Tracking Log [2] | 30 | 750 | 22,500 | 0.25 | 5625 |
| SubTotal—Patient Navigator Burden | 30 | 751 | 22530 | 0.5 | 5632.5 |
| Grantee PN Administrative Records [3] | 6 | 1 | 6 | 0.5 | 3 |
| Medical Record and Clinic Data [4] (Baseline Measures) | 6 | 2000 | 12000 | 2 | 24000 |
| Quarterly Report | 6 | 4 | 24 | 1 | 24 |
| SubTotal—Grantee Burden | 18 | 2005 | 12030 | 3.5 | 24027 |
| Total Average Annual Burden | 6048 | 2757 | 40560 | 4.5 | 32659.5 |

[1] Estimated number of navigated patients per year based on applications was rounded to 6000. See table below for projected numbers navigated by Grantee.
[2] Assumes 5 log entries of PN activities per patient.
[3] Includes administrative data related to PN recruitment, hiring, and training.
[4] Includes medical record abstraction and clinic database abstraction on individual patients (note: Decreased to 2 hours per patient).

| | Over 2 yrs | Annual |
|---|---|---|
| Goodwin | 400 | 200 |
| Lutheran | 650 | 325 |
| Northeast | 6000 | 3000 |
| Palmetto | 3000 | 1500 |
| South Broward | 2200 | 1100 |
| Texas Tech | 500 | 250 |
| Total | 12750 | 6375 |

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: February 27, 2009.

**Alexandra Huttinger,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. E9–5102 Filed 3–10–09; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; Revision of OMB No. 0925–0001/exp. 11/30/10, Research and Research Training Grant Applications and Related Forms

*Summary:* Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 10, 2008, page 75121 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after November 30, 2010, unless it displays a currently valid OMB control number.

*Proposed Collection: Title:* Research and Research Training Grant Applications and Related Forms. *Type of Information Collection Request:* Revision, OMB 0925–0001, Expiration Date 11/30/2010. *Form Numbers:* PHS 398, 2590, 2271, 3734 and HHS 568. *Need and Use of Information Collection:* The application is used by applicants to request Federal assistance for research and research-related training. The other related forms are used for trainee appointment, final invention reporting, and to relinquish rights to a research grant. *Frequency of response:* Applicants may submit applications for published receipt dates. If awarded, annual progress is reported and trainees may be appointed or reappointed. *Affected Public:* Individuals or Households; Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or Tribal Government. *Type of Respondents:* Adult scientific professionals. The annual reporting burden is as follows: *Estimated Number of Respondents:* 160,135; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 14; and *Estimated Total Annual Burden Hours Requested:* 2,251,500. The estimated annualized cost to respondents is $78,802,500.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments To OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Ms. Mikia Currie, Division of Grants Policy, Office of Policy for Extramural Research Administration, NIH, Rockledge 1 Building, Room 3505, 6705 Rockledge Drive, Bethesda, MD 20892–7974, or call non-toll-free number (301) 435–0941, or E-mail your request, including your address to: *curriem@od.nih.gov.*

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: March 3, 2009.

**Mikia P. Currie,**

*Office of Policy for Extramural Research Administration, National Institutes of Health.*

[FR Doc. E9–5133 Filed 3–10–09; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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:* Center for Scientific Review, Special Emphasis Panel Virology.

*Date:* March 12, 2009.

*Time:* 1:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Marian Wachtel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3208, MSC 7858, Bethesda, MD 20892. 301–435–1148. *wachtelm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(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: March 3, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–4988 Filed 3–10–09; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Center for Research Resources Special Emphasis Panel. Pre-application for A Biomedical Technology Research Resource.

*Date:* April 2, 2009.

*Time:* 8 a.m to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Virtual Meeting).

*Contact Person:* Bonnie Dunn, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., Dem. 1, Rm. 1074, MSC 4874, Bethesda, MD 20892–4874. 301–435–0824. *dunnbo@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research;93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: March 4, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–5136 Filed 3–10–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), 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 Alcohol Abuse and Alcoholism, Initial Review Group, Biomedical Research Review Subcommittee.

*Date:* June 8–9, 2009.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Washington Plaza Hotel, 10 Thomas Circle NW., Washington, DC 20005.

*Contact Person:* Philippe Marmillot, PhD, Scientific Review Officer, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism. 5635 Fishers Lane, Rm. 2019, Bethesda, MD 20892. 301–443–2861. *marmillotp@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research

Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 4, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–4990 Filed 3–10–09; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Program Project Review.

*Date:* April 2, 2009.

*Time:* 1 p.m to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone Conference Call).

*Contact Person:* Eric H. Brown, BS, AB, MS, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd, Room 1068, MSC 4874, Bethesda, MD 20892–4874. (301) 435–0815. *browneri@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 4, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–5121 Filed 3–10–09; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Division of Intramural Research Board of Scientific Counselors, NIAID. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Division of Intramural Research Board of Scientific Counselors, NIAID.

*Date:* June 1–3, 2009.

*Time:* June 1, 2009, 8 a.m. to 6:15 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 50, 50 Center Drive, Conference Rooms 1227/1233, Bethesda, MD 20892.

*Time:* June 2, 2009, 7:30 a.m. to 7:05 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 50, 50 Center Drive, Conference Rooms 1227/1233, Bethesda, MD 20892.

*Time:* June 3, 2009, 7:30 a.m. to 12:45 p.m.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 50, 50 Center Drive, Conference Rooms 1227/1233, Bethesda, MD 20892.

*Contact Person:* Kathryn C. Zoon, PhD, Director, Division of Intramural Research, National Institute of Allergy and Infectious Diseases, NIH, Building 31, Room 4A30, Bethesda, MD 20892, 301–496–3006, *kzoon@niaid.nih.gov.*

(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: March 4, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–5134 Filed 3–10–09; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Program on Drug Resistance.

*Date:* March 26, 2009.

*Time:* 12 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

*Contact Person:* Eric Lorenzo, PhD., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2640, *lorenzoe@niaid.nih.gov.*

(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: March 4, 2009.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. E9–5137 Filed 3–10–09; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies Federal

agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

**SUPPLEMENTARY INFORMATION:** The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227. 414–328–7840/800–877–7016. (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624. 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118. 901–794–5770/888–290–1150.

Aegis Sciences Corporation, 345 Hill Ave., Nashville, TN 37210. 615–255–2400. (Formerly: Aegis Analytical Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299. 501–202–2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clendo Reference Laboratory, Avenue Santa Cruz #58, Bayamon, Puerto Rico 00959. 787–620–9095.

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802. 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913. 239–561–8200/800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602. 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974. 215–674–9310.

DynaLIFE Dx*, 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2. 780–451–3702/ 800–661–9876. (Formerly: Dynacare Kasper Medical Laboratories ).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655. 662–236–2609.

Gamma-Dynacare Medical Laboratories*, A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4. 519–679–1630.

Kroll Laboratory Specialists, Inc. , 1111 Newton St., Gretna, LA 70053. 504–361–8989/ 800–433–3823. (Formerly: Laboratory Specialists, Inc.).

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA 23236. 804–378–9130. (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040. 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869. 908–526–2400/ 800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709. 919–572–6900/ 800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671. 866–827–8042/800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219. 913–888–3927/ 800–873–8845. (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Maxxam Analytics*, 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8. 905–817–5700. (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112. 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE. 2nd Ave., Portland, OR 97232. 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417. 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304. 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504. 888–747–3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311. 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204. 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121. 858–643–5555.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340. 770–452–1590/800–729–6432. (Formerly: SmithKline Beecham

Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403. 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405. 866–370–6699/818–989–2521. (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109. 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601. 574–234–4176 x276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040. 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915. 517–364–7400. (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101. 405–272–7052.

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 NW. 79th Ave., Miami, FL 33166. 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235. 301–677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

**Elaine Parry,**

*Director, Office of Program Services, SAMHSA.*

[FR Doc. E9–5153 Filed 3–10–09; 8:45 am]

**BILLING CODE 4160–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–3302–EM; Docket ID FEMA–2008–0018]**

### Kentucky; Amendment No. 3 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency declaration for the Commonwealth of Kentucky (FEMA–3302–EM), dated January 28, 2009, and related determinations.

**EFFECTIVE DATE:** February 5, 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 the incident period for this emergency is closed effective February 5, 2009.

(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.)

**Nancy Ward,**

*Acting Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–5232 Filed 3–10–09; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1823–DR; Docket ID FEMA–2008–0018]**

### Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1823–DR), dated February 17, 2009, and related determinations.

**DATES:** *Effective Date:* February 25, 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:** The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 17, 2009.

Comanche, Haskell, McIntosh, Muskogee, Okfuskee, and Sequoyah Counties for Public Assistance.

(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.)

**Nancy Ward,**

*Acting Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–5233 Filed 3–10–09; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Internal Agency Docket No. FEMA–1820–DR; Docket ID FEMA–2008–0018]**

### Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1820–DR), dated February 15, 2009, and related determinations.

**DATES:** *Effective Date:* February 25, 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:** The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 15, 2009.

Carter County for Public Assistance, including direct Federal assistance, (already designated for Individual Assistance).

Coal and Love Counties for Public Assistance, including direct Federal assistance.

(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.)

**Nancy Ward,**

*Acting Administrator, Federal Emergency Management Agency.*

[FR Doc. E9–5234 Filed 3–10–09; 8:45 am]

**BILLING CODE 9111–23–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5285–N–05]**

### Notice of Proposed Information Collection: Comment Request; Mortgagee's Certification of Fees and Escrow

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 11, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

**FOR FURTHER INFORMATION CONTACT:** Joyce Allen, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Mortgagee's Certificate.

*OMB Control Number, if applicable:* 2502–0468.

*Description of the need for the information and proposed use:* The information collection is used by Mortgagees to ensure that fees are within acceptable limits and the required escrows will be collected. HUD determines the reasonableness of the fees and uses the information in calculating the financial requirement for closing.

*Agency form numbers, if applicable:* HUD–2434.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The number of burden hours is 750. The number of respondents is 1,000. The estimated number of annual responses is 1,000. The frequency of each response is once for each application submitted for mortgage insurance.

*Status of the proposed information collection:* This is an extension of a currently approved collection.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 4, 2009.

**Ronald Spraker,**

*Deputy Assistant Secretary for Finance and Budget.*

[FR Doc. E9–5125 Filed 3–10–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–5291–N–02]**

### Privacy Act of 1974; Notice of a Computer Matching Program Between the Department of Housing and Urban Development (HUD) and the Social Security Administration (SSA): Matching Tenant Data in Assisted Housing Programs

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice of a computer matching program between HUD and SSA.

**SUMMARY:** Pursuant to the Computer Matching and Privacy Protection Act of 1988, as amended, and the Office of Management and Budget's (OMB) Guidance on the statute (5U.S.C. 552a, as amended), HUD is notifying the public of its intent to enter into a new computer matching program with SSA in May 2009. HUD will obtain SSA data and make the results available to (1) program administrators such as public housing agencies (PHAs) and private owners and management agents (O/As) to enable them to verify the accuracy of income reported by the tenants (participants) of HUD rental assistance programs and (2) contract administrators (CAs) overseeing and monitoring O/A operations as well as independent public auditors (IPAs) that audit both PHAs and O/As. SSA data will also be used to validate information provided by borrowers and co-borrowers applying for and obtaining insurance for Federal Housing Administration (FHA) mortgages.

Administrators of HUD rental assistance programs rely upon the accuracy of tenant-reported income to determine participant eligibility for and level of, rental assistance. The computer matching program will provide indicators of potential under-reported tenant income that will require additional verification to identify inappropriate (excess or insufficient) rental assistance, and perhaps administrative or legal actions. The matching program will be carried out to detect inappropriate (excessive or insufficient) rental assistance under sections 221(3), 221(d)(5), and 236 of the National Housing Act, the United States Housing Act of 1937, section 101 of the Housing and Community Development Act of 1965, section 202 of the Housing Act of 1959, section 811 of the Cranston-Gonzalez National Affordable Housing Act, the Native American Housing Assistance and Self-Determination Act of 1996, and the Quality Housing and Work Responsibility Act (QHWRA) of 1998. The program will also provide for verification of Social Security numbers (SSNs) for tenants participating in covered rental assistance programs, and borrowers and co-borrowers applying for mortgage insurance for FHA loans through HUD. This Notice provides an overview of computer matching for HUD's rental assistance programs. Specifically, the Notice describes HUD's program for computer matching of its tenant data to SSA's death data, Social Security (SS) and Supplemental Security Income (SSI) benefits data.

**DATES:** *Effective Date:* Computer matching is expected to begin *April 10, 2009*, unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

*Comments Due Date:* April 10, 2009.

**ADDRESSES:** Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Comments sent by facsimile are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** For Privacy Act inquires: Office of the Chief Information Officer, contact Donna Robinson-Staton, Departmental Privacy Act Officer, HUD, 451 Seventh Street, SW., Room 2256, Washington, DC 20410, telephone number (202) 402–8073. For program information: Office of Public and Indian Housing, contact Nicole Faison, Director of the Office of Public Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4226, Washington, DC 20410, telephone number (202) 708–0744; Office of Housing, contact Gail Williamson, Director of the Housing Assistance Policy Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6138, Washington, DC 20410, telephone number (202) 402–2473. (These are not toll free telephone numbers). A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

**SUPPLEMENTARY INFORMATION:** This Notice supersedes a similar notice published in the **Federal Register** (FR) on October 5, 2006 at 71 FR 58871. The Computer Matching and Privacy Protection Act (CMPPA) of 1988, an amendment to the Privacy Act of 1974 (5 U.S.C. 552a), OMB's guidance on this statute entitled ''Final Guidance Interpreting the Provisions of Public Law 100–503, the CMPPA of 1988'' (OMB Guidance), and OMB Circular No. A–130 requires publication of notices of computer matching programs. Appendix I to OMB's Revision of Circular No. A–130, ''Transmittal Memorandum No. 4, Management of Federal Information Resources,'' prescribes Federal agency responsibilities for maintaining records about individuals. In compliance with the CMPPA and Appendix I to OMB Circular No. A–130, copies of this notice are being provided to the Committee on Government Reform and Oversight of the House of Representatives, the Committee of Homeland Security and Governmental Affairs of the Senate, and OMB's Office of Information and Regulatory Affairs.

## I. Authority

This matching program is being conducted pursuant to the Privacy Act of 1974 (5 U.S.C 552a); 542(b) of the 1998 Appropriations Act (Pub. L. 105–65); section 904 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 3544); section 165 of the Housing and Community Development Act of 1987 (42 U.S.C. 3543); the National Housing Act (12 U.S.C. 1701–1750g); the United States Housing Act of 1937 (42 U.S.C. 1437–1437z); section 101 of the Housing and Community Development Act of 1965 (12 U.S.C. 1701s); the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*); and the QHWRA Act of 1998 (42 U.S.C. 1437a(f)). The Housing and Community Development Act of 1987 authorizes HUD to require participants (and applicants) in HUD-administered programs involving loan and rental assistance to disclose to HUD their social security numbers (SSNs) as a condition of continuing (or initial) eligibility for participation in the programs. The QHWRA of 1998, section 508(d), 42 U.S.C. 1437a(f) authorizes the Secretary of HUD to require disclosure by the tenant to the PHA of income information received by the tenant from HUD as part of the income verification procedures of HUD. The QHWRA was amended by Public Law 106–74, which extended the disclosure requirements to participants in section 8, section 202, and section 811 assistance programs. The participants are required to disclose the HUD-provided income information to owners responsible for determining the participant's eligibility or level of benefits.

## II. Covered Programs

This Notice of computer matching program applies to the following rental assistance programs:

A. Public Housing.

B. Section 8 Housing Choice Voucher (HCV).

C. Project-based Section 8.

1. New Construction.

2. State Agency Financed.

3. Substantial Rehabilitation.
4. Section 202/8.
5. Rural Housing Services Section 515/8.
6. Loan Management Set-Aside (LMSA).
7. Property Disposition Set-Aside (PDSA).
D. Rent Supplement.
E. Rental Assistance Payment (RAP).
F. Section 202/162 Project Assistance Contract (PAC).
G. Section 202 Project Rental Assistance Contract (PRAC).
H. Section 811 PRAC.
I. Section 236.
J. Section 221(d)(3) Below Market Interest Rate (BMIR).

**Note:** This Notice does not apply to the Low Income Housing Tax Credit (LIHTC) or the Rural Housing Services Section 515 without Section 8 programs.

**III. Objectives To Be Met by the Matching Program**

HUD's primary objective in implementing the computer matching program is to verify the income of individuals participating in the rental assistance programs identified in paragraph II above to determine the appropriate level of rental assistance, and to detect, deter, reduce and correct fraud and abuse in rental assistance programs. In meeting this objective, HUD also is carrying out its responsibility under 42 U.S.C. 1437f(K) to ensure that income data provided to POAs by household members is complete and accurate. HUD's various assisted housing programs, administered through POAs, require that applicants and participants meet certain income and other criteria to be eligible for rental assistance. In addition, tenants generally are required to report the amounts and sources of their income at least annually. However, under the QHWRA of 1998, PHAs must offer public housing tenants the option to pay a flat rent, or an income-based rent annually. Those tenants who select a flat rent will be required to recertify income at least every three years. In addition, the Changes to the Admissions and Occupancy Final Rule (March 29, 2000; 65 FR 16692) specified that household composition must be recertified annually for tenants who select a flat rent or income-based rent.

Other objectives of this computer matching program include: (1) Increasing the availability of rental assistance to individuals who meet the requirements of the rental assistance programs; (2) after removal of personal identifiers, conducting analyses of the Social Security death data and benefit information, and income reporting of program participants; and (3) measure improper payments due to under-reporting of income and/or overpayment of subsidy on behalf of deceased program participants (single member households).

**III. Program Description**

In this computer matching program, tenant-provided information included in HUD's automated systems of records known as *Tenant Rental Assistance Certification System* (TRACS) (HUD/H–11) and the Inventory Management System (IMS), formerly known as the *Public and Indian Housing Information Center* (PIC) (HUD/PIH–4), will be compared to data from SSA databases. The notices for these systems were published at 62 FR 11909 and 73 FR 58256, respectively. HUD will disclose to SSA only tenant personal identifiers, *i.e.*, full name, Social Security number, and date of birth. SSA will match the HUD-provided personal identifiers to personal identifiers included in their various systems of records identified in Section IV of this notice. SSA will validate HUD-provided personal identifiers and provide income data to HUD only for individuals with matched personal identifiers. SSA will also provide the date of death or indication of death for any program participant whose HUD-supplied personal identifiers are successfully matched against SSA databases. For any individual whose personal identifiers do not match the personal identifiers in the SSA database, SSA will provide HUD with an error message, which will describe the reason(s) for no match (*i.e.* incorrect date of birth or surname, or invalid Social Security number).

*A. Income Verification*

Any match (*i.e.*, a ''hit'') will be further reviewed by HUD, the POAs, or the HUD Office of Inspector General (OIG) to determine whether the income reported by tenants to the program administrator is correct and complies with HUD and program administrator requirements. Specifically, current or prior SS and SSI benefit information and other data will be sought directly from tenants. For public housing and Section 8 tenant-based HCV programs, tenants will be required to provide PHAs with original SSA benefit verification letters dated within the last 60 days for comparison to computer matching results for accuracy. For multifamily housing programs, tenants must provide O/As with SSA benefit verification letters dated within the last 120 days. For SS and SSI benefit information for prior years, the tenant may be required to provide POAs with an original benefit history document from SSA if there is a dispute regarding historical income information obtained through the computer matching program.

*B. Administrative or Legal Actions*

Regarding all the matching described in this notice, POAs will take appropriate action in consultation with tenants to: (1) Resolve income disparities between tenant-reported and SSA-reported data; and (2) Use correct income amounts in determining rental assistance.

POAs must compute the rent in full compliance with all applicable statutes, regulations and administrator policies. POAs must ensure that they use the correct income and correctly compute the rent. In order to protect any individual whose records are used in this matching program, POAs may not suspend, terminate, reduce, or make a final denial of any rental assistance to any tenant, or take other adverse action against the tenant as a result of information produced by this matching program until: (a) The tenant has received notice from the POA of its findings and has been informed of the opportunity to contest such findings; (b) The POA has independently verified the information; and (c) either the notice period provided in applicable regulations of the program, or 30 days, whichever is later, has expired. ''Independently verified'' in item (b) means the specific information relating to the tenant that is used as a basis for an adverse action has been investigated and confirmed by the POA. (5 U.S.C. 552a) As such, POAs must resolve income discrepancies in consultation with tenants. Additionally, serious violations, which POAs, HUD Program staff, or the HUD OIG verify, should be referred for full investigation and appropriate civil and/or criminal proceedings.

With respect to SSA-provided error messages regarding HUD-provided tenant, and matched borrower or co-borrower personal identifiers, the POA and FHA administrator/agent will confirm its file and system documentation to confirm accuracy of data elements, and make any necessary corrections. If there is no error in the documentation, the POAs and FHA administrators/agents will notify the individual of the error and request that the individual contact the SSA to correct any SSA data errors. POAs and FHA administrators/agents cannot correct such errors.

**IV. Records To Be Matched**

SSA will conduct the matching of tenant SSNs and additional identifiers (surnames and dates of birth) to tenant data that HUD supplies from its systems of records known as the Tenant Rental Assistance Certification System (TRACS) (HUD/H–11) and the *Inventory Management System (IMS)*, formerly known as the *Public and Indian Housing Information Center* (PIC) (HUD/PIH–4). Program administrators utilize the form HUD–50058 module within the PIC system and the form HUD–50059 module within the TRACS to provide HUD with the tenant data.

SSA will match the tenant records included in HUD/H–11 and HUD/PIH–4 to their systems of records known as SSA's *Master Files of Social Security Number Holders, and SSN Applications* (60–0058), *Master Beneficiary Record* (60–0090), and *Supplemental Security Income Record* (60–103). The notice for these systems was published at 71 FR 1795 on January 11, 2006. HUD will place the resulting matched data into its *Enterprise Income Verification (EIV) system* (HUD/PIH–5). The notice for this system was initially published at 70 FR 41780 on July 20, 2005, and amended on August 8, 2006 (71 FR 45066) to reflect changes in the following categories (sections): Individuals Covered by the System, Records in the System, Authority for Maintenance of the System, Purpose of the System and the Routine Uses. The tenant records (one record for each family member) include these data elements: full name, SSN, and date of birth.

HUD data will also be matched to the SSA's *Master Files of Social Security Number Holders, and SSN Applications* (60–0058) for the purpose of validating SSNs of borrowers and co-borrowers of FHA mortgages and participants of HUD rental assistance programs to identify noncompliance with program eligibility requirements. The Computerized Homes Underwriting Management System (HUD/H–5), published at 57 FR 62142 on December 29, 1997 is the HUD FHA system of records used to match data transferred from SSA's Master Files of Social Security Number Holder and SSN Applications (60–0058) to the HUD mainframe. Mortgagees enter SSN data and review the returning verification/failure data through the FHA Connection. HUD will compare tenant SSNs provided by POAs to reveal duplicate SSNs and potential duplicate rental assistance.

**V. Period of the Match**

The computer matching program will be conducted according to the computer matching agreement between HUD and the SSA. The computer matching agreement for the planned matches will terminate either when the purpose of the computer matching program is accomplished, or 18 months from the date the agreement is signed, whichever comes first. The agreement may be extended for one 12-month period, with the mutual agreement of all involved parties, if the following conditions are met:

(1) Within three months of the expiration date, all Data Integrity Boards review the agreement, find that the program will be conducted without change, and find a continued favorable examination of benefit/cost results; and (2) All parties certify that the program has been conducted in compliance with the agreement.

The agreement may be terminated, prior to accomplishment of the computer matching purpose or 18 months from the date the agreement is signed (whichever comes first), by the mutual agreement of all involved parties within 30 days of written notice.

Dated: March 3, 2009.

**Lynn Allen,**

*Acting Chief Information Officer.*

[FR Doc. E9–5127 Filed 3–10–09; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[FWS–R2–ES–2009–N0026;20124–1113–0000–F3]**

### Environmental Restoration Project; Phoenix Reach of the Rio Salado

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of availability of draft safe harbor agreement; receipt of application for and enhancement of survival permit.

**SUMMARY:** The City of Phoenix (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to Section 10(a)(1)(A) of the Endangered Species Act (Act), as amended. The requested permit, which is for a period of 50 years, would authorize incidental take of Yuma clapper rail (*Rallus longirostris yumanensis*), southwestern willow flycatcher (*Empidonax traillii extimus*), bald eagle (*Haliaeetus Leucocephalus*), and brown pelican (*Pelecanus occidentalis*) as a result of operation and maintenance activities associated with the Rio Salado Project. We invite the public to review and comment on the permit application and the associated draft Safe Harbor Agreement (SHA).

**DATES:** To ensure consideration, we must receive any written comments on or before April 10, 2009.

**ADDRESSES:** Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951; telephone: 602–242–0210; fax: 602–242–2513; Web site: *http://www.fws.gov/arizonaes.*

**FOR FURTHER INFORMATION CONTACT:** Mike Martinez at the Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021–4951, 602/242–0210 x224, or by e-mail at *Mike_Martinez@fws.gov*.

**SUPPLEMENTARY INFORMATION:** The Applicant plans to conduct operation and maintenance activities associated with the Rio Salado Project including maintenance of vegetation, roads, trails, water delivery system, flood control capacity, and storm water facilities. The Rio Salado Project, Phoenix Reach, is a cooperative project between the Applicant and the U.S. Army Corps of Engineers to restore, enhance, and maintain 595 acres of native riparian and wetland vegetation along the Salt River from 24th Street to 19th Avenue.

**Request for Public Information**

Persons wishing to review the application, draft SHA, or other related documents may obtain a copy by written or telephone request to the Field Supervisor at our Phoenix office, or by downloading it from our Web site (see **ADDRESSES**). Submit all comments to the Field Supervisor at the same address. Please refer to permit number TE–205294–0 when submitting comments. The application and related documents will be available for public inspection, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the Phoenix office.

**Public Availability of Comments**

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**National Environmental Policy Act Determination**

The draft SHA and permit application may be eligible for categorical exclusion

under the National Environmental Policy Act (NEPA) of 1969, based upon completion of a preliminary NEPA screening form. Section 9 of the Act prohibits the ''taking'' of threatened or endangered species. However, the Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

**Thomas C. Bauer,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. E9–5163 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–55–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Proposed Collection of Information; Comment Request

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Bureau of Indian Education is seeking comments on the renewal of the Information Collection Request for the Tribal Colleges and Universities Application for Grants, OMB No. 1076–0018, and the Annual Report Form, OMB No. 1076–0105, as required by the Paperwork Reduction Act of 1995.

**DATES:** Submit comments on or before May 11, 2009.

**ADDRESSES:** Written comments should be sent directly to Kevin Skenandore, Bureau of Indian Education, 1849 C Street, NW., Mail Stop 3609–MIB, Washington, DC 20240–0001. You may also send comments via facsimile to 202–208–3271.

**FOR FURTHER INFORMATION CONTACT:** You may request further information or obtain copies of the proposed information collection request from James C. Redman at 405–605–601, extension 100.

**SUPPLEMENTARY INFORMATION:** Each Tribal College and University requesting financial assistance and receiving financial assistance is statutorily required to provide information to assess an accounting of amounts and purposes of financial assistance for the preceding academic year as provided for in 25 CFR part 41. The information collection is needed to collect an assessment of performance accountability of Federal funds as required by the Government Performance and Result Act of 1993.

**Request for Comments**

The Bureau of Indian Education requests your comments on this collection concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used;

(c) Ways we could enhance the quality, utility and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 3609, during the hours of 8 a.m. to 4:30 p.m., EST Monday through Friday except for legal holidays. Before including your address, telephone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

**Information Collection Abstract**

*OMB Control Number:* 1076–0105.

*Type of Review:* Renewal.

*Title:* Tribal Colleges and Universities Annual Report Form.

*Brief Description of Collection:* The information is mandatory by Public Law 95–471 for the respondent to receive or maintain a benefit, specifically grants for students.

*Respondents:* Tribal College and University administrators.

*Number of Respondents:* 26.

*Estimated Time per Response:* 3 hours.

*Frequency of Response:* Annually.

*Total Annual Burden to Respondents:* 78.

**Information Collection Abstract**

*OMB Control Number:* 1076–0105.

*Type of Review:* Renewal.

*Title:* Tribal Colleges and Universities Application for Grants Form.

*Brief Description of Collection:* The information is mandatory by Public Law 95–471 for the respondent to receive or maintain a benefit, *i.e.*, grants for students.

*Respondents:* Tribal College and University administrators.

*Number of Respondents:* 26.

*Estimated Time per Response:* 1 hour.

*Frequency of Response:* Annually.

*Total Annual Burden to Respondents:* 26.

Dated: March 5, 2009.

**Alvin Foster,**

*Deputy Chief Information Officer—Indian Affairs.*

[FR Doc. E9–5256 Filed 3–10–09; 8:45 am]

**BILLING CODE 4310–6W–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[F–21901–33, F–21901–34, F–21901–35, F–21901–71, F–21904–39, F–21904–40, F–21904–42, F–21904–43, F–21904–44, F–21904–46, F–21904–47, F–21904–48, F–21904–76, F–21904–77, F–21904–78, F–21904–83, F–21904–93, F–21905–18, F–21905–62, F–21905–74, F–21905–76, F–21905–77, F–21905–78, F–21905–79; AK–964–1410–KC–P]**

### Alaska Native Claims Selection

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of decision approving lands for conveyance.

**SUMMARY:** As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Chicken, Alaska, and are located in:

**Copper River Meridian, Alaska**

T. 26 N., R. 11 E.,
Secs. 1 to 36, inclusive.
Containing approximately 22,932 acres.

T. 27 N., R. 11 E.,
Secs. 1 to 36, inclusive.
Containing approximately 22,862 acres.

T. 28 N., R. 11 E.,
Secs. 31 to 36, inclusive.
Containing approximately 3,750 acres.

T. 26 N., R. 12 E.,

Secs. 1 to 36, inclusive.
Containing approximately 22,932 acres.
T. 27 N., R. 12 E.,
Secs. 1 to 36, inclusive.
Containing approximately 22,860 acres.
T. 28 N., R. 12 E.,
Secs. 31 to 36, inclusive.
Containing approximately 3,750 acres.
T. 26 N., R. 13 E.,
Secs. 1 to 36, inclusive.
Containing approximately 22,932 acres.
T. 27 N., R. 13 E.,
Secs. 18, 19, and 20;
Secs. 29 to 33, inclusive.
Containing approximately 5,008 acres.
T. 28 N., R. 13 E.,
Secs. 31 to 36, inclusive.
Containing approximately 3,750 acres.
T. 28 N., R. 14 E.,
Secs. 31 to 36, inclusive.
Containing approximately 3,750 acres.
T. 19 N., R. 16 E., Secs. 1 and 2;
Secs. 10 to 16, inclusive;
Secs. 21 to 36, inclusive.
Containing approximately 15,950 acres.

**Fairbanks Meridian, Alaska**

T. 7 S., R. 23 E.,
Secs. 1 and 2;
Secs. 10 to 16, inclusive;
Secs. 20 to 29, inclusive;
Secs. 32 to 36, inclusive.
Containing approximately 15,360 acres.
T. 8 S., R. 23 E.,
Secs. 1 to 36, inclusive.
Containing approximately 23,004 acres.
T. 6 S., R. 24 E.,
Secs. 24, 25, 35, and 36.
Containing approximately 1,760 acres.
T. 7 S., R. 24 E.,
Secs. 1 to 36, inclusive.
Containing approximately 22,932 acres.
T. 8 S., R. 24 E.,
Secs. 1 to 36, inclusive.
Containing approximately 23,004 acres.
T. 6 S., R. 25 E.,
Secs. 1, 12, 13, and 14;
Secs. 23 to 26, inclusive;
Secs. 31 and 36.
Containing approximately 5,935 acres.
T. 8 S., R. 25 E.,
Secs. 1 to 36, inclusive.
Containing approximately 23,004 acres.
T. 6 S., R. 26 E.,
Secs. 1 to 36, inclusive.
Containing approximately 22,860 acres.
T. 7 S., R. 26 E.,
Secs. 1 to 36, inclusive.
Containing approximately 22,932 acres.
T. 4 S., R. 28 E.,
Secs. 1 and 2;
Secs. 7 and 18.
Containing approximately 2,544 acres
Aggregating approximately 313,811 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

**DATES:** The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until April 10, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**ADDRESSES:** A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

**FOR FURTHER INFORMATION CONTACT:** The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

**Hillary Woods,**

*Land Law Examiner, Land Transfer Adjudication I.*

[FR Doc. E9–5160 Filed 3–10–09; 8:45 am]

**BILLING CODE 4310–JA–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLCAC00000–L07770900–XZ0000]**

### Meeting of the Central California Resource Advisory Council Off-Highway Vehicle Subcommittee

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council Off-Highway Vehicle (OHV) Subcommittee will meet as indicated below.

**DATES:** The Bureau of Land Management Central California Resource Advisory Council Off-Highway Vehicle Subcommittee will meet April 18, 2009, in the Merced County Board of Supervisors Board Chambers. The room is located on the third floor of the County Administration Building, 23rd and M streets (2222 M Street), Merced, CA. The meeting will run from about from 10 a.m. to noon. Members of the public are welcome to attend the meeting. The subcommittee will conduct organizational business and discuss OHV issues for the subcommittee to address.

**FOR FURTHER INFORMATION CONTACT:** BLM Central California Public Affairs Officer David Christy, both at (916) 985–4474.

**SUPPLEMENTARY INFORMATION:** The twelve-member Central California RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues associated with public land management in the Central California. The RAC approved formation of an OHV Subcommittee in April 2007. The meeting is open to the public. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

Dated: March 3, 2009.

**David Christy,**

*Public Affairs Officer.*

[FR Doc. E9–5101 Filed 3–10–09; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[LLMTC03000–L10200000–PK0000]**

### Notice of Public Meeting, Dakotas Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), Dakotas Resource Advisory Council will meet as indicated below.

**DATES:** The meeting will be held April 16 and 17, 2009. The meeting will begin at 1 p.m. on April 16, 2009. The public comment period will begin at 8 a.m. on Friday, April 17, 2009.

**ADDRESSES:** The meeting will be held at the Holiday Inn, 305 North 27th Street, Spearfish, South Dakota, 57783.

**SUPPLEMENTARY INFORMATION:** The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in North and South Dakota. All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments.

Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below. The Council will hear updates to Sage Grouse Conservation studies, recreation fees and resource management planning issues and ongoing efforts.

**FOR FURTHER INFORMATION CONTACT:** Lonny Bagley, Field Manager, North Dakota Field Office, 99 23rd Avenue West, Dickinson, North Dakota, 701.227.7700, or Marian Atkins, Field Manager, South Dakota Field Office, 310 Roundup St., Belle Fourche, South Dakota, 605.892.7000.

Dated: March 4, 2009.

**Lonny R. Bagley,**

*Field Manager.*

[FR Doc. E9–5151 Filed 3–10–09; 8:45 am]

**BILLING CODE 4310–$$–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Final Environmental Impact Statement/ Comprehensive Management Plan: Ala Kahakai National Historic Trail, Hawaii County, HI; Notice of Approval of Record of Decision

**SUMMARY:** Pursuant to 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service (NPS) has prepared and approved a Record of Decision for the *Final Environmental Impact Statement* for the Comprehensive Management Plan for the Ala Kahakai National Historic Trail. The requisite no-action ''wait period'' was initiated November 7, 2008, with the Environmental Protection Agency's **Federal Register** notification of the filing of the Final EIS.

*Decision:* As soon as practical the NPS will begin to implement an Ahupua'a trail system (described and analyzed as the agency-preferred *Alternative C* in the Final EIS, and which includes no substantive changes from the course of action as presented in the Draft EIS). The full range of foreseeable environmental consequences was assessed, and appropriate mitigation measures are included in the approved plan. Both a No Action alternative and an additional ''action'' alternative were identified and analyzed. During an extended scoping period, strong community support was expressed for concepts which were developed as the agency-preferred alternative presented in the Draft EIS. Due to the minimal nature of public response to the Draft EIS, an abbreviated format was utilized in preparing the Final EIS. As documented in the Draft and Final EIS, the selected alternative was deemed to be the ''environmentally preferred'' course of action.

*Copies:* Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Ala Kahakai National Historic Trail, 73–4786 Kanalani St., #14, Kailua-Kona, HI 96740 or via telephone request at (808) 326–6012.

Dated: January 29, 2009.

**Cynthia L. Ip,**

*Acting Regional Director, Pacific West Region.*

[FR Doc. E9–5145 Filed 3–10–09; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Environmental Impact Statement/ General Management Plan; Kalaupapa National Historical Park, Kalawao County, Molokai, HI; Notice of Intent To Prepare an Environmental Impact Statement

**SUMMARY:** In accord with section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), the National Park Service is undertaking a conservation planning and environmental impact analysis process for developing a General Management Plan (GMP) for Kalaupapa National Historical Park, Hawaii. An Environmental Impact Statement (EIS) will be prepared concurrently with the GMP. The GMP is intended to set forth the basic management philosophy for this unit of the National Park System and provide the strategies for addressing issues and achieving identified management objectives. Thus, the GMP serves as a ''blueprint'' to guide management of natural and cultural resources and visitor use during the next 15–20 years.

Consistent with NPS Planning Program Standards, the updated GMP will: (1) Describe the National Historical Park's purpose, significance, and primary interpretive themes; (2) identify the fundamental resources and values of the park, its other important resources and values, and describe the condition of these resources; (3) describe desired conditions for cultural and natural resources and visitor experiences throughout the park; (4) develop management zoning to support these desired conditions; (5) develop alternative applications of these management zones to the Park's landscape (i.e., zoning alternatives); (6) address user capacity; (7) analyze potential boundary modifications; (8) ensure that management recommendations are developed in consultation with interested partners and the public and adopted by NPS leadership after an adequate analysis of the benefits, environmental impacts, and economic costs of alternative courses of action; (9) develop cost estimates implementing each of the alternatives; and (10) identify and prioritize subsequent detailed studies, plans and actions that may be needed to implement the updated GMP.

*Scoping Process:* The park will undertake extensive scoping outreach efforts in order to elicit early public comment regarding issues and concerns, the nature and extent of potential environmental impacts (and as appropriate, mitigation measures), and alternatives which should be addressed in the GMP. Through the outreach activities planned in the scoping phase, the NPS welcomes information and suggestions from the public regarding resource protection, visitor use, and land management. This notice formally initiates the public scoping comment phase for the EIS process. All scoping comments must be postmarked or transmitted not later than July 15, 2009, and should be *addressed to:* General Management Plan, *Attn:* Steve Prokop, Superintendent, Kalaupapa National Historical Park, P.O. Box 2222, Kalaupapa, HI 96742 (or may also be transmitted electronically via *http://parkplanning.nps.gov/kala).* Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

At this time, it is expected that public workshops will take place on Molokai, Oahu, and Maui, and possibly Hawaii and Kauai in late April and early May 2009. Detailed information regarding these meetings will be posted on the GMP Web site (noted above) and announced through local and regional press media. All attendees will be given the opportunity to ask questions and provide comments to the planning team. The GMP Web site will provide the

most up-to-date information regarding the project, including project description, planning process updates, meeting notices, reports and documents, and useful links associated with the project.

**SUPPLEMENTARY INFORMATION:** Kalaupapa National Historical Park was established as a unit of the National Park System on December 22, 1980. The park is oriented toward patient privacy and maintaining the patients' lifestyles, and the patients are guaranteed they may remain at Kalaupapa as long as they wish. These park purposes will continue for as long as there is a resident Hansen's disease patient community at Kalaupapa. The park purpose also includes more ''conventional'' park purposes: to preserve and interpret the Kalaupapa Settlement for the education and inspiration of present and future generations; to research, preserve and maintain the historic structures and character of the community, as well as cultural values, Native Hawaiian remnants and natural features; and to provide limited visitation by the general public.

Federally owned land at Kalaupapa NHP includes a lighthouse, 23 acres surrounding it, and 7 associated structures. The remainder of the park land is currently in non-Federal ownership, managed under a lease and a series of cooperative agreements mandated by legislation. The NPS currently has a fifty year lease agreement (with 35 years remaining) for the approximately 1300 acres of the Kalaupapa Settlement owned by the Department of Hawaiian Home Lands (DHHL). The remainder of the land is owned by the State of Hawaii. Formal 20-year cooperative agreements for management have been signed with the State of Hawaii Departments of Health (DOH), Transportation (DOT), and Land and Natural Resources (DLNR); the Roman Catholic Church; and the United Church of Christ. These mandated agreements allow for preservation of critical resources, but do not provide long-term rights and interests for the NPS. Fewer than twenty-five Hansen's disease patients still reside at Kalaupapa, either in their own homes or at Kalaupapa's hospital/care-home. Most of these patients are elderly and in poor health (youngest is presently in his late sixties). Thus, a very critical need is to engage the patients in dialog about the future that they envision when there no longer is a patient community residing in the park. Crafting this long-range future planning while the patients are yet able to participate and convey their ideas and vision of how they want their story told in the future is a key element of the overall process.

The current ''Statement for Management'' for Kalaupapa NHP was approved in August 1987. This document provides the primary guidance for management of the resources, operations and maintenance of the park. It was preceded by the ''Proposal for the Establishment of Kalaupapa National Historical Preserve'' (April 1980) which was labeled as the ''General Management Plan'' in December 1980. In addition, an approved 1984 Resource Management Plan which provided then-available resource management direction needs to be updated. The legislation establishing the park specifically directs a re-evaluation of park management: ''At such time when there is no longer a resident patient community at Kalaupapa, the Secretary shall reevaluate the policies governing the management, administration, and public use of the park in order to identify any changes deemed to be appropriate.'' (Pub. L. 95–565, section 109). This is the time to begin that process. Kalaupapa NHP needs guidance for a dramatic and fundamental change in park management that will occur in the near future. As long as Hansen's disease patients remain at Kalaupapa, park operations are subservient to services and health care for the patients, patient privacy, and maintaining patients' lifestyles. The State Department of Health has substantial control over activities in Kalaupapa. Visitation is restricted to 100 people per day, no children are allowed, and the law gives patients the right of first refusal to provide visitor services. Once Kalaupapa is no longer a home and safe haven for the rapidly declining Hansen's disease population, the fundamental management direction of the park will change, and the NPS needs to be in a position to influence these changes.

A GMP is needed to establish the vision for what the park will be like when there no longer are patients residing there. The GMP will help the NPS set the agenda for discussions, negotiations and collaboration with Kalaupapa's land owners and managers, funding agencies, local Hansen's disease residents and other partners to ensure the long term protection of important resources at Kalaupapa.

*Decision Process:* Following the scoping phase and consideration of public concerns and other agency comments, a Draft EIS for the GMP will be prepared and released for public review. Availability of the forthcoming Draft EIS for public review and comment will be similarly announced through the **Federal Register**. Following due consideration of all agency and public comment, a Final EIS will be prepared. As a delegated EIS, the official responsible for the final decision on the proposed plan is the Regional Director, Pacific West Region, National Park Service. Subsequently, the official responsible for implementation of the approved plan is the Superintendent, Kalaupapa National Historical Park. It is anticipated that the final plan will be available in 2013.

Dated: January 29, 2009.

**Cynthia L. Ip,**

*Acting Regional Director.*

[FR Doc. E9–5146 Filed 3–10–09; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Final Environmental Impact Statement; Wetland and Creek Restoration at Big Lagoon Golden Gate National Recreation Area; Marin County, California; Notice of Approval of Record of Decision

**SUMMARY:** Pursuant to 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the *Final Environmental Impact Statement* (Final EIS) for Wetland and Creek Restoration at Big Lagoon, Golden Gate National Recreation Area. The requisite no-action ''wait period'' was initiated December 21, 2007, with the Environmental Protection Agency's **Federal Register** notification of the filing of the Final EIS.

*Decision:* As soon as practical Golden Gate National Recreation Area, in cooperation with the County of Marin, will begin to implement restoration strategies and park and area improvements identified and analyzed as the *Preferred Alternative* presented in the Final EIS (with minor modifications from the course of action as presented in the EIS, based upon final consultations with partner agencies). The full range of foreseeable environmental consequences was assessed, and appropriate mitigation measures identified. Both a No Action alternative and multiple ''action'' alternatives were identified and analyzed (three restoration alternatives, six public access alternatives, four bridge alternatives, and five fill disposal

alternatives). The selected alternative was deemed to be the ''environmentally preferred'' course of action.

*Copies:* Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123 or via telephone request at (415) 561–2841.

Dated: November 25, 2008.

**Jonathan B. Jarvis,**

*Regional Director, Pacific West Region.*

[FR Doc. E9–5150 Filed 3–10–09; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent To Prepare a General Management Plan and Environmental Impact Statement for Buffalo National River, Arkansas

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Intent to Prepare a General Management Plan and Environmental Impact Statement for Buffalo National River, Arkansas.

**SUMMARY:** Under the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the National Park Service (NPS) is preparing an environmental impact statement (EIS) for the General Management Plan (GMP) for Buffalo National River, Arkansas. The GMP/EIS will establish the overall direction for Buffalo National River by setting broad management goals for managing the area over the next 15 to 20 years.

**DATES:** Participation in the planning process will be encouraged and facilitated by various means, including newsletters and public meetings. The NPS will conduct public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of the specific dates, times, and locations of all such meetings will be announced in the local media, in NPS newsletters, on the park's Web site at *http://www.nps.gov/buff,* and on the NPS's Planning, Environment and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov.*

**ADDRESSES:** Additionally, anyone who wishes to comment on any issues associated with the GMP may submit comments by any one of several methods. One may mail or hand-deliver comments to Superintendent, Buffalo National River, 402 North Walnut, Harrison, Arkansas, 72601–1173. Comments also may be provided electronically on the PEPC Web site at the address above. Additionally, information will be available for public review and comment from the Office of the Superintendent at the above address. Requests to be added to the project mailing list should be sent by mail to Superintendent—GMP, Buffalo National River, 402 North Walnut, Harrison, Arkansas, 72601–1173 or by e-mail to *BUFF_Superintendent@nps.gov* (please put ''GMP'' in the subject line).

Before including an address, telephone number, e-mail address, or other personal identifying information in the comments, 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. We will make all submissions from organizations or businesses, or from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Superintendent Kevin Cheri, Buffalo National River, 402 North Walnut, Harrison, Arkansas, 72601–1173, telephone 870–365–2700.

**SUPPLEMENTARY INFORMATION:** Buffalo National River, located in northwestern Arkansas, was established as America's first National River in 1972 to conserve and interpret an area containing unique scenic and scientific features, and to preserve as a free-flowing stream an important segment of the Buffalo River in Arkansas. Buffalo National River is currently operating under a 1977 Master Plan, which is seriously outdated, not only because of additions to the infrastructure, but because of current issues that were not addressed previously and that require new management direction. Buffalo National River also needs to identify major program areas and provide a context for activities and program planning.

The GMP/EIS will prescribe the resource conditions and visitor experiences that are to be achieved and maintained, based on such factors as Buffalo National River's purpose, significance, special mandates, the body of laws and policies directing its management, resource analysis, and the range of public expectations and concerns. The GMP/EIS will outline the kinds of resource management activities, visitor activities, and development that would be appropriate at Buffalo National River in the future.

A range of reasonable management alternatives will be developed through this planning process and will include, at minimum, a No-Action Alternative and a Preferred Alternative. Major issues the document will address include protection and management of cultural and natural resources, management of expired use and occupancy tracts, effects of adjacent land uses on Buffalo National River's resources, increased visitation and changing use patterns, commercial services, and future recreational opportunities.

To facilitate sound planning and environmental analysis, the NPS intends to gather information necessary for the preparation of the EIS and obtain suggestions and information from other Agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited. All interested persons, organizations, agencies, and Tribes are encouraged to submit comments and suggestions on issues and concerns that should be addressed in the GMP/EIS and the range of appropriate alternatives that should be examined.

Dated: February 4, 2009.

**David N. Given,**

*Acting Regional Director, Midwest Region.*

[FR Doc. E9–5144 Filed 3–10–09; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate a Cultural Item: San Diego Museum of Man, San Diego, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the possession of the San Diego Museum of Man, San Diego, CA, that meets the definition of ''object of cultural patrimony'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

In 1986, one Wihosa mask was acquired from Sylvester Matthias, a Pima, from Komatke, AZ, who inherited it as the last person in the (hereditary) line. The cultural item is used in the Navichu ceremony.

Recorded information from museum records about the object of cultural patrimony states that the item was located on traditional Pima (Akimel O'odham) land. A tribal representative for the Gila River Indian Community of the Gila River Indian Reservation, Arizona, communicated to the San Diego Museum of Man that the item is an object of cultural patrimony and has ongoing historical, traditional, or cultural importance central to the Gila River Indian Community of the Gila River Indian Reservation itself, rather than being property owned by an individual. The Wihosa mask is still used in the Navichu ceremony and is not the property of a single individual. This object of cultural patrimony was previously described in a Notice of Intent to Repatriate in the **Federal Register** (73 FR 59653, October 9, 2008), and had been culturally affiliated to the Tohono O'odham Nation of Arizona. Since publication of the October 9, 2008 notice, the Gila River Indian Community of the Gila River Indian Reservation, Arizona, has claimed the Wihosa mask as culturally affiliated to them.

Officials of the San Diego Museum of Man have determined that, pursuant to 25 U.S.C. 3001 (3)(D), the one cultural item described above has ongoing historical, traditional, or cultural importance central to the Native American group or culture itself, rather than property owned by an individual. Officials of the San Diego Museum of Man also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the object of cultural patrimony and the Gila River Indian Community of the Gila River Indian Reservation, Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the object of cultural patrimony should contact Philip Hoog, Archaeology and NAGPRA Coordinator, San Diego Museum of Man, 1350 El Prado, Balboa Park, San Diego, CA 92101, telephone (619) 239–2001, before April 10, 2009. Repatriation of the object of cultural patrimony to the Gila River Indian Community of the Gila River Indian Reservation, Arizona may proceed after that date if no additional claimants come forward.

The San Diego Museum of Man is responsible for notifying the Gila River Indian Community of the Gila River Indian Reservation, Arizona and Tohono O'odham Nation of Arizona that this notice has been published.

Dated: February 12, 2009

**Sangita Chari,**

*Acting Manager, National NAGPRA Program.*

[FR Doc. E9–5315 Filed 3–10–09; 8:45 am]

**BILLING CODE 4312–50–S**

## INTERNATIONAL TRADE COMMISSION

**[Inv. Nos. 731–TA–753, 754, and 756 (Second Review)]**

## Cut-to-Length Carbon Steel Plate From China, Russia, and Ukraine

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of full five-year reviews concerning the antidumping duty order on cut-to-length carbon steel plate from China and the suspended investigations on cut-to-length carbon steel plate from Russia and Ukraine.

**SUMMARY:** The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on cut-to-length carbon steel plate from China and the suspended investigations on cut-to-length carbon steel plate from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**DATES:** *Effective Date:* March 5, 2009.

**FOR FURTHER INFORMATION CONTACT:** Dana Lofgren (202–205–2539), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

**SUPPLEMENTARY INFORMATION:**

*Background*—On November 4, 2008, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (73 FR 70368, November 20, 2008). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's Web site.

*Participation in the Reviews and Public Service List*—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

*Limited Disclosure of Business Proprietary Information (BPI) under an Administrative Protective Order (APO) and BPI Service List*—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

*Staff Report*—The prehearing staff report in the reviews will be placed in the nonpublic record on August 19, 2009, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

*Hearing*—The Commission will hold a hearing in connection with the

reviews beginning at 9:30 a.m. on September 9, 2009, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 1, 2009. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 2, 2009, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

*Written Submissions*—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is August 28, 2009. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is September 18, 2009; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before September 18, 2009. On October 7, 2009, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 9, 2009, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 5, 2009.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. E9–5198 Filed 3–10–09; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OMB Number 1121–NEW]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: New Information Collection, OJJDP National Training and Technical Assistance Center (NTTAC), Needs Assessment of the Juvenile Justice Field Package.

The Department of Justice, Office of Justice Programs will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for 60 days until May 11, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tricia Trice, Training and Technical Assistance Coordinator, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice, 810 7th Street, NW., Washington, DC 20531. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Information Collection.

(2) *The Title of the Form/Collection:* OJJDP NTTAC Needs Assessment of the Juvenile Justice Field.

(3) *The Agency Form Number, if Any, and the Applicable Component of the Department of Justice Sponsoring the Collection:* Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. *Primary:* State, Local or Tribal. *Other:* Federal Government; Individuals or households; Not-for-profit institutions; Businesses or other for-profit. *Abstract:* The Office of Juvenile Justice and Delinquency Prevention's National Training and Technical Assistance Center (NTTAC) Needs Assessment is designed to assess the current training and technical assistance

needs of professionals working in the juvenile justice field. The needs assessment will capture information regarding the topics of interest to the field, the level of need for information about the topic, the types of training and technical assistance of interest around a topic, and the specific challenges that the field is facing in their work. The needs assessment utilizes an on-line format and incorporated skip patterns to ensure that each completion is tailored to the needs of the respondent and reduces the burden of time to complete the instrument. The information will be used to improve services and plan for future training and technical assistance efforts in a fiscally responsible manner that can provide the greatest benefit and impact.

(5) *An Estimate of the Total Number of Respondents and the Amount of Time Estimated for an Average Respondent to Respond/Reply:* It is expected that invitations for completion will be sent to approximately 6,000 respondents with a 60% response rate. This would indicate approximately 3,600 respondents who will require an average of 20 minutes to complete the needs assessment.

(5) *An Estimate of the Total Public Burden (In Hours) Associated with the Collection:*

The total annual public burden hours for this information collection is estimated to be 1200 hours.

*If Additional Information is Required Contact:* Lynn Bryant, Deputy Clearance Officer, United States Department of Justice, Planning and Policy Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC 20530.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–5239 Filed 3–10–09; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

**[OMB Number 1121–NEW]**

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Assessing the Performance of Juvenile DNA System.

The Urban Institute, Justice Policy Center, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until May 11, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Simon Tidd, The Urban Institute Justice Policy Center, 2100 M Street, NW., Washington, DC 20037.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Telephone interviews with state lab directors and SDIS administrators. Collection of summary statistics on juvenile DNA records within CODIS.

(2) *Title of the Form/Collection:* Assessing the Performance of Juvenile DNA System

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: National Institute of Justice, Office of Justice Programs, No form number.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State Crime Lab Directors. Other: State CODIS personnel. The Urban Institute has been funded by the NIJ to examine the collection and use of juvenile DNA. We will establish the state-specific policies and practices through interviews with state lab personnel and non-identifiable summary data on the number of juveniles included in SDIS and the DNA crime matches attributed to that population. This data can then be used to assess the value of juvenile DNA records from the practitioner perspective and inform DNA policy decisions at the local, state, and Federal level.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Interviews will occur with one state crime lab director and CODIS administrator in each state, for a total of 70 estimated respondents. Telephone interviews are expected to take 1 hour each (35 respondents). Summary statistic collection is expected to take 3 hours (35 respondents); 1 hour for discussion with us, 1.5 hours for the actually data pull, and .5 hours to format and transmit the summary statistics.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated burden hours to complete both interviews and data collection is 140 hours.

*If additional information is required contact:* Lynn Bryant, Department Clearance Officer, United States Department of Justice, Planning and Policy Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: March 6, 2009.

**Lynn Bryant,**

*Department Clearance Officer, PRA, United States Department of Justice.*

[FR Doc. E9–5240 Filed 3–10–09; 8:45 am]

**BILLING CODE 4410–18–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,591]**

### Gensym Corporation, A Subsidiary of Versata Enterprises, Inc., Burlington, MA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated February 20, 2009, the Division of Career Services, Trade Program Manager, Massachusetts, requested administrative reconsideration of the negative determination regarding workers'

eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on February 4, 2009 and will soon be published in the **Federal Register**.

The initial investigation resulted in a negative determination based on the finding that the worker group engaged in IT sales, consulting and support services, does not produce an article within the meaning of Section 222(a)(2) of the Act.

In the request for reconsideration, the petitioner provided additional information regarding activities of the workers at the subject facility. The petitioners stated that workers of the subject firm produced software which was sold to customers.

The Department has carefully reviewed the request for reconsideration and determined that the Department will conduct further investigation to determine whether the workers of the subject firm were engaged in production of articles and whether they meet the eligibility requirements of the Trade Act of 1974.

**Conclusion**

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 2nd day of March 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5181 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,344]**

### General Motors Corporation, Moraine Assembly Plant, Vehicle Manufacturing Division, Including On-Site Leased Workers From Allied Systems, Ltd and Securitas, Moraine, OH; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 5, 2008, applicable to workers of General Motors Corporation, Moraine Assembly Plant, Vehicle Manufacturing Division, Moraine, Ohio. The notice was published in the **Federal Register** on June 20, 2008 (73 FR 35164). The certification was amended on December 4, 2008 to include on-site leased workers from Allied Systems, Ltd. The notice was published in the **Federal Register** on December 15, 2008 (73 FR 76057–76058).

At the request of a petitioner, the Department reviewed the certification for workers of the subject firm. The workers assemble Buick Rainiers, Chevrolet TrailBlazers, GMC Envoys, Isuzu Ascenders and Saab 9–7Xs.

New information shows that workers leased from Securitas were employed on-site at the Moraine, Ohio location of General Motors Corporation, Moraine Assembly Plant, Vehicle Manufacturing Division. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers from Securitas working on-site at the Moraine Assembly Plant, Vehicle Manufacturing Division, Moraine, Ohio location of the subject firm.

The amended notice applicable to TA–W–63,344 is hereby issued as follows:

All workers of General Motors Corporation, Moraine Assembly Plant, Vehicle Manufacturing Division, including on-site leased workers from Allied Systems, LTD, and Securitas, Moraine, Ohio, who became totally or partially separated from employment on or after June 17, 2008, through June 5, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 27th day of February 2008.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5173 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,393]**

### Nikko America, Plano, TX; Notice of Negative Determination Regarding Application for Reconsideration

By application dated January 22, 2009, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The denial notice was signed on January 6, 2009 and published in the **Federal Register** on February 2, 2009 (74 FR 5871).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition filed on behalf of workers at Nikko America, Plano, Texas was based on the finding that the worker group does not produce an article within the meaning of Section 222 of the Trade Act of 1974.

The petitioner in the request for reconsideration contends that the Department erred in its interpretation of the work performed by the workers of the subject firm. The petitioner stated that workers of the subject firm ''were responsible for final assembly of some products'', including ''putting batteries in the boxes where the toys were already located and placing decal stickers on the toys, taping them back up and distributing these products''. The petitioner further stated that Nikko decreased production of toys in 2008 and decided to import products directly to consumers bypassing the distribution center.

The investigation revealed that workers of Nikko America, Plano, Texas were engaged in warehousing, sales, distribution and service of radio controlled toys during the relevant period. No articles were produced by Nikko America in the United States. The subject firm imported all the products

from subsidiaries of its parent company abroad. The investigation revealed that workers performed some light repair functions of products, repackaged and shipped imported products, provided customer service and performed warehousing services. The functions, as described above, are not considered production of an article within the meaning of Section 222 of the Trade Act. While the provision of warehousing and distribution services may result in repair and repackaging of the products, it is incidental to the provision of these services. No production took place at the subject facility nor did the workers support production of an article at any domestic affiliated location during the relevant period.

The petitioner alleges that increased imports of toys negatively impacted workers at the subject facility.

The allegation of the increase in imports of toys would have been relevant, if it was determined that workers of the subject firm manufactured toys. The workers were engaged in warehousing, sales and distribution of imported products. Therefore, increase in imports of toys is irrelevant to this investigation.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination.

After careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 2nd day of March 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5178 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,575]**

### Philips Consumer Lifestyle, Including On-Site Leased Workers From Ryder Integrated Logistics, Ledgewood, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 16, 2008, applicable to workers of Philips Consumer Lifestyle, Ledgewood, New Jersey. The notice was published in the **Federal Register** on July 30, 2008 (73 FR 44284). The certification was amended on September 12, 2008 to include employees of the subject firm working at various locations in multiple States (TA–W–63,575A—TA–W–63,575H). The notice was published in the **Federal Register** on September 23, 2008 (73 FR 54859–54860).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of antennas and packaged electronic accessories.

New information shows that workers leased from Ryder Integrated Logistics were employed on-site at the Ledgewood, New Jersey location of Philips Consumer Lifestyle. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Ryder Integrated Logistics working on-site at the Ledgewood, New Jersey location of the subject firm.

The intent of the Department's certification is to include all workers of Philips Consumer Lifestyle who were adversely affected by a shift in production of antennas and packaged electronic accessories to China.

The amended notice applicable to TA–W–63,575 is hereby issued as follows:

''All workers of Philips Consumer Lifestyle, including on-site leased workers from Ryder Integrated Logistics, Ledgewood, New Jersey, who became totally or partially separated from employment on or after June 18, 2007, through July 16, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 2nd day of March 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5174 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,442]**

### Technology Associates, Inc., D/B/A Ranal Measurement Point Division, Auburn, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application dated January 22, 2009, workers requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of Technologies Associates Inc., d/b/a Ranal, Measurement Point division, Auburn, Michigan (subject firm) to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA).

The negative determination was issued on December 24, 2008. The Department's Notice of negative determination was published in the **Federal Register** on January 14, 2009 (74 FR 2139). The workers perform engineering service related to measurement points on component parts for the automotive industry. The denial was based on the finding that the subject firm does not produce an article within the meaning of Section 222(a)(2) of the Act.

The workers' request for reconsideration stated that ''the petitioners were support personnel to General Motors * * * General Motors has trained workers in India to perform functions that we use[d] to perform and shipped work there. * * * If work was not being disbursed to India that work would be available to domestic workers.''

Pursuant to 29 CFR 90.18(c), administrative reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The Department has consistently determined that articles (whether tangible or intangible) produced incidental to the provision of a service are not considered articles for purposes of the Trade Act of 1974. Further, even if the ''Measurement Point Drawings and Electronic Measurement files'' were articles, for purposes of the Trade Act, the shift of production was not by the subject firm but by the firm's customer (General Motors).

In order to apply for TAA, the subject worker group must meet the group eligibility requirements for directly-impacted (primary) workers under Section 222(a) of the Trade Act of 1974, as amended, based on a shift of production, the Department must find that there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision.

After careful review of the request for reconsideration, the support documentation, and previously submitted materials, the Department determines that there is no new information that supports a finding that Section 222 of the Trade Act of 1974 was satisfied and that no mistake or misinterpretation of the facts or of the law with regards to the number or proportion of workers separated from the subject firm during the relevant period.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 3rd day of March 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5180 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,401]**

### Qimonda 200MM Facility, Including On-Site Leased Workers From Tokyo Electron America, Nikon Precision, Inc., and Ebara Technologies, Inc., Sandston, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 11, 2008, applicable to workers of Qimonda 200MM Facility, Sandston, Virginia. The notice was published in the **Federal Register** on December 30, 2008 (73 FR 79914).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of DRAM semiconductor wafers.

New information shows that workers leased from Ebara Technologies, Inc., were employed on-site at the Sandston, Virginia location of Qimonda 200MM Facility. The Department has determined that these workers were sufficiently under the control of Qimonda 200MM Facility to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Ebara Technologies, Inc., working on-site at the Sandston, Virginia location of the subject firm.

The intent of the Department's certification is to include all workers employed at Qimonda 200MM Facility, Sandston, Virginia who were adversely affected by a shift in production to a foreign country followed by increased imports of articles like or directly competitive with the DRAM semiconductor wafers produced by the subject firm.

The amended notice applicable to TA–W–64,401 is hereby issued as follows:

''All workers of Qimonda 200MM Facility, including on-site leased workers from Tokyo Electron America, Nikon Precision, Inc., and Ebara Technologies, Inc., who became totally or partially separated from employment on or after November 11, 2007 through December 11, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 3rd day of March 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5179 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,264]**

### Auto Truck Transport, Mount Holly, North Carolina Terminal, Mount Holly, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 17, 2009, in response to a petition filed on behalf of workers at Auto Truck Transport, Mount Holly, North Carolina Terminal, Mount Holly, North Carolina.

The petitioners have requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 4th day of March 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5187 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,152]**

### CCL Container, Hermitage, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 6, 2009, in response to a petition filed by a company official on behalf of workers of CCL Container, Hermitage, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of February 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5184 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,298]**

### Ferraz Shawmut, LLC, Newburyport, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 19, 2009 in response to a petition filed by a company official on behalf of workers of Ferraz Shawmut, LLC, Newburyport, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 2nd day of March 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5188 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,229; TA–W–64,229A]**

### Hanesbrands, Inc., Formerly Known as Sara Lee Branded Apparel, Including On-Site Leased Workers From Diversco Integrated Services, Eden, NC; Hanesbrands, Inc., Formerly Known As Sara Lee Branded Apparel, Including On-Site Leased Workers From Diversco Integrated Services, Forest City, NC; Notice of Termination of Investigation

March 4, 2009.

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on October 16, 2008 in response to a worker petition filed by a company official on behalf of workers of Hanesbrands, Inc., Eden, North Carolina (TA–W–64,229) and Hanesbrands, Inc., Forest City, North Carolina (TA–W–64,229A).

Due to existing certifications issued for Hanesbrands, Inc., Eden, North Carolina (TA–W–61,962K) and Hanesbrands, Inc., Forest City, North Carolina (TA–W–61,962L), these certifications have been terminated.

Signed at Washington, DC, this 9th day of December 2008.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5177 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,871]**

### Mars Petcare US, Inc., Vernon, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 13, 2009 in response to a worker petition filed by a State Workforce office on behalf of workers of Mars Petcare US, Inc., Vernon, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 4th day of March 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5182 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,306]**

### Product Action Internatinal, Princeton, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 19, 2009 in response to a worker petition filed on behalf of workers at Product Action International, Princeton, Indiana.

The petitioning group of workers is covered by an earlier petition (TA–W–65,283) filed on February 18, 2009 that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 27th day of February 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5189 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,972]**

### Risdon International, Laconia, NH; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 22, 2009 in response to a petition filed by a company official on behalf of workers of Risdon International, Laconia, New Hampshire.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 27th day of February 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5183 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,212]**

### Ryder Logistics, Ledgewood, NJ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 11, 2009, in response to a petition filed by a State agency representative on behalf of workers of Ryder Logistics working at Philips Consumer Lifestyles in Ledgewood, New Jersey.

The petitioning group of workers is covered by an earlier petition certification (TA–W–63,575, as amended), which does not expire until July 16, 2010. Consequently, further investigation in this case would serve no purpose and this investigation is terminated.

Signed at Washington, DC, this 2nd day of March 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5185 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,348]**

### Small Parts Manufacturing, Portland, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 23, 2009 in response to a petition filed on behalf of workers of Small Parts Manufacturing, Portland, Oregon.

The Department has determined that the petition is invalid. The petitioner is a worker and not a state agency representative as indicated on the petition. A petition filed by workers must be completed by three workers.

Accordingly, this petition investigation is terminated.

Signed at Washington, DC, this 26th day of February 2009.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5190 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,227]**

### Tama Manufacturing Co., Inc. Allentown, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 10, 2009 in response to a worker petition filed by UNITE HERE on behalf of workers of Tama Manufacturing Co., Inc., Allentown, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 2nd day of March 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5172 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–65,251]**

### The H.B. Smith Company, Westfield, MA; Notice of Termination of Investigation

In accordance with Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 13, 2009 in response to a petition filed by a company official on behalf of workers of The H. B. Smith Company, Westfield, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 3rd day of March 2009.

**Richard Church,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5186 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–64,020]**

### American Multimedia, Inc., Burlington, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application dated January 6, 2009, a worker requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of American Multimedia, Inc., Burlington, North Carolina (subject firm) to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The Department's Notice of Affirmative Determination Regarding Application for Reconsideration was signed on January 9, 2009, and published in the **Federal Register** on January 15, 2009 (74 FR 2632).

The initial determination was based on the Department's findings that imports of replicated media (CDs, VHS tapes, DVDs, and cassette tapes) did not contribute importantly to worker separations at the subject firm and that no shift of production to a foreign country occurred.

In the request for reconsideration, the worker provided additional information regarding the customers of the subject firm and alleges that the customers might have increased imports of CDs, VHS tapes, DVDs, and cassette tapes.

In order to apply for TAA based on increased imports, the subject worker group must meet the group eligibility requirements under Section 222(a) of the Trade Act of 1974, as amended. Under Section 222(a)(2)(A), the following criteria must be met:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated; *and*

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; *and*

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision.

A careful review of previously-submitted information revealed that neither the subject firm nor its major declining customers imported CDs, VHS tapes, DVDs, and cassette tapes.

During the reconsideration investigation, the Department conducted a survey of the customers identified in the request for reconsideration regarding their purchases of CDs, VHS tapes, DVDs, and cassette tapes (including like or directly competitive articles) during 2006, 2007, and 2008. Based on the information provided by the respondents, the Department determines that none of the customers increased their imports while decreasing their purchases from the subject firm during the relevant period.

Based on the information above, the Department determines that the group eligibility requirements under Section 222(a) of the Trade Act of 1974, as amended, were not met.

In order for the Department to issue a certification of eligibility to apply for ATAA, the subject worker group must be certified eligible to apply for TAA. Since the subject workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

**Conclusion**

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of American Multimedia, Inc., Burlington, North Carolina.

Signed at Washington, DC, this 3rd day of March 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5176 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–63,981]**

### Prime Tanning Company, Incorporated, Berwick, ME; Notice of Revised Determination on Reconsideration

On January 2, 2009, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of subject firm. The Department's Notice of affirmative determination was published in the **Federal Register** on January 15, 2009 (74 FR 2632). Subject firm workers produce tanned leather.

The negative determination was based on the Department's findings that the subject firm did not shift production to a foreign country and that neither the subject firm nor its major declining customers increased imports of articles like or directly competitive with those produced by the subject firm.

During the reconsideration investigation, the Department received new information that a major declining customer had increased its reliance on imports of articles like or directly competitive with those produced by the subject firm. Therefore, the Department determines that increased imports contributed importantly to subject firm declines and workers' separations.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department herein presents the results of its investigation regarding certification of eligibility to apply for ATAA. The Department has determined in this case that the group eligibility requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Prime Tanning Company, Inc., Berwick, Maine, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

''All workers of Prime Tanning Company, Inc., Berwick, Maine, who became totally or partially separated from employment on or after September 2, 2007, through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC this 5th day of March 2009.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E9–5175 Filed 3–10–09; 8:45 am]

**BILLING CODE 4510–FN–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (09–021)]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

**DATES:** March 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Padilla, Patent Counsel, Ames Research Center, Code 202A–4, Moffett Field, CA 94035–1000; telephone (650) 604–5104; fax (650) 604–2767.

*NASA Case No. ARC–15983–1:* Radiation Shielding Systems Using Nanotechnology.

Dated: March 4, 2009.

**Richard W. Sherman,**

*Deputy General Counsel.*

[FR Doc. E9–5105 Filed 3–10–09; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (09–023)]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

**DATES:** March 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Bryan A. Geurts, Patent Counsel, Goddard Space Flight Center, Mail Code 140.1, Greenbelt, MD 20771–0001; telephone (301) 286–7351; fax (301) 286–9502.

*NASA Case No. GSC–15377–1:* Advanced Adhesive Bond Shape Tailoring for Large Composite Primary Structures Subjected to Cryogenic and Ambient Loading Environments;

*NASA Case No. GSC–15431–1:* A Two-Axis Direct Fluid Shear Stress Sensor.

Dated: March 4, 2009.

**Richard W. Sherman,**

*Deputy General Counsel.*

[FR Doc. E9–5092 Filed 3–10–09; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (09–024)]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

**DATES:** March 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mark W. Homer, Patent Counsel, NASA Management Office—JPL, 4800 Oak Grove Drive, Mail Stop 180–200, Pasadena, CA 91109; telephone (818) 354–7770.

*NASA Case No.:* NPO–45730–1: Phased-Array Optical Whispering Gallery Mode Modulator and Method.

Dated: March 4, 2009.

**Richard W. Sherman,**

*Deputy General Counsel.*

[FR Doc. E9–5108 Filed 3–10–09; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (09–025)]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

**DATES:** March 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Linda B. Blackburn, Patent Counsel, Langley Research Center, Mail Code 141, Hampton, VA 23681–2199; telephone (757) 864–3221; fax (757) 864–9190.

*NASA Case No. LAR–17528–1:* Robotic-Movement Payload Lifter and Manipulator;

*NASA Case No. LAR–17593–1:* Wireless Damage Location Sensing System;

*NASA Case No. LAR–17044–1:* Method of Generating X-Ray Diffraction Data for Integral Detection of Twin Defects in Super-Hetero-Epitaxial Materials;

*NASA Case No. LAR–17185–1:* Epitaxial Growth of Cubic Crystalline Semiconductor Alloys on Basal Plane of Trigonal or Hexagonal Crystal;

*NASA Case No. LAR–17381–1:* Thermoelectric Materials and Devices;

*NASA Case No. LAR–17405–1:* Hybrid Bandgap Engineering for Super-Hetero-Epitaxial Semiconductor Materials, and Products Thereof;

*NASA Case No. LAR–17553–1:* Rhombohedral Cubic Semiconductor Materials on Trigonal Substrate with Single Crystal Properties and Devices Based on Such Materials;

*NASA Case No. LAR–17554–1:* X-ray Diffraction Wafer Mapping Method for Rhombohedral Super-Hetero-Epitaxy;

*NASA Case No. LAR–17576–1:* Wave Energy Transmission Apparatus for High-Temperature Environments;

*NASA Case No. LAR–17224–1:* Aqueous Solution Dispersement of Carbon Nanotubes;

*NASA Case No. LAR–17238–1:* Carbon Nanotube Electrodes and Method for Fabricating Same for use in Biofuel Cell and Fuel Cell Applications:

*NASA Case No. LAR–17608–1:* Methodology for Predicting and Optimizing System Parameters for Electrospinning System;

*NASA Case No. LAR–17634–1:* Dual-Use Transducer for Use with a Boundary-Stiffened Panel and Method of Using the Same.

Dated: March 4, 2009.

**Richard W. Sherman,**

*Deputy General Counsel.*

[FR Doc. E9–5111 Filed 3–10–09; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (09–022)]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

**DATES:** March 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** Kaprice L. Harris, Attorney Advisor, Glenn Research Center at Lewis Field, Code 500–118, Cleveland, OH 44135; telephone (216) 433–5754; fax (216) 433–6790.

*NASA Case No. LEW–18261–1:* A Software Platform for Post-Processing Waveform-Based NDE;

*NASA Case No. LEW–18313–1:* A Novel Nanoionics-Based Switch for Radiofrequency (RF) Applications;

*NASA Case No. LEW–18205–1:* Branched Rod-Coil Polyimide-Poly(ethylene oxide) (PEO) Copolymers that are Cured in the Solid State at Ambient Temperatures.

Dated: March 4, 2009.

**Richard W. Sherman,**

*Deputy General Counsel.*

[FR Doc. E9–5115 Filed 3–10–09; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (09–020)]**

### Government-Owned Inventions, Available for Licensing

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of availability of inventions for licensing.

**SUMMARY:** Patent applications on the inventions listed below assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

**DATES:** March 11, 2009.

**FOR FURTHER INFORMATION CONTACT:** James J. McGroary, Patent Counsel, Marshall Space Flight Center, Mail Code LS01, Huntsville, AL 35812; telephone (256) 544–0013; fax (256) 544–0258.

*NASA Case No. MFS–32518–1:* Liquid Propellant Injection Elements with Self-Adjusted Inlet Area for Rocket and Other Combustor-Type Engines Applications;

*NASA Case No. MFS–32597–1:* Electromagnetic Pump for High-Temperature Liquid Metals;

*NASA Case No. MFS–32584–1:* Optical System and Method for Gas Detection and Monitoring.

**Richard W. Sherman,**

*Deputy General Counsel.*

[FR Doc. E9–5110 Filed 3–10–09; 8:45 am]

**BILLING CODE 7510–13–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference from the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506. These meetings are being scheduled on an emergency basis to review applications for funding under the American Recovery and Reinvestment Act of 2009 as follows (ending times are approximate):

*State & Regional Partnerships #1:* March 25, 2009. This meeting, from 12 p.m. to 2 p.m., will be open.

*State & Regional Partnerships #2:* March 25, 2009. This meeting, from 3 p.m. to 4:30 p.m., will be open.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: March 6, 2009.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. E9–5271 Filed 3–10–09; 8:45 am]

**BILLING CODE 7537–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards

Meeting of the Plant Operations and Fire Protection Subcommittee; Notice of Meeting

The ACRS Subcommittee on Plant Operations & Fire Protection will hold a meeting on March 31, 2009, at 11545 Rockville Pike, Rockville, Maryland, Room T2–B3.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: March 31, 2009–8:30 a.m.–4:30 p.m.

The Subcommittee will discuss the Safety Evaluation Report related to the operation of Watts Bar Nuclear Plant, Unit 2. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, Tennessee Valley Authority, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Maitri Banerjee (telephone 301–415–6973) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 6, 2008, (73FR 58268–58269).

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7 a.m. and 4:45 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 5, 2009.

**Cayetano Santos,**

*Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.*

[FR Doc. E9–5263 Filed 3–10–09; 8:45 am]

**BILLING CODE 7590–01–P**

## PRESIDIO TRUST

### Notice of Public Meeting

**AGENCY:** The Presidio Trust.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb appendix, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Tuesday, April 7, 2009, at the Herbst International Exhibition Hall, 385 Moraga Avenue, San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to provide an Executive Director's report, to receive public comment on the revised Draft Presidio Trust Management Plan Main Post Update and Draft Supplement to the Supplemental Environmental Impact Statement, and to receive public comment on other matters in accordance with the Presidio Trust's Public Outreach Policy.

Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at 415.561.5300 prior to March 27, 2009.

**DATES:** The meeting will begin at 6:30 p.m. on Tuesday, April 7, 2009.

**ADDRESSES:** The meeting will be held at the Herbst International Exhibition Hall, 385 Moraga Avenue, San Francisco, California.

**FOR FURTHER INFORMATION CONTACT:** Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: 415.561.5300.

Dated: March 5, 2009.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. E9–5155 Filed 3–10–09; 8:45 am]

**BILLING CODE 4310–4R–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, March 12, 2009 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), 9(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Paredes, as duty officer, voted to consider the items listed for the Closed Meeting in closed session.

The subject matter of the Closed Meeting scheduled for Thursday, March 12, 2009 will be:

Institution and settlement of injunctive actions;

institution and settlement of administrative proceedings of an enforcement nature;

an adjudicatory matter; and

other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: March 5, 2009.

**Elizabeth M. Murphy,**

*Secretary.*

[FR Doc. E9–5132 Filed 3–10–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59516; File No. SR–BATS–2009–007]**

## Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

March 5, 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 March 2, 2009, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. BATS has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective March 2, 2009.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to modify its fee schedule applicable to use of the Exchange effective March 2, 2009, in order to: (i) Reduce the rebate provided to Members who add liquidity to the Exchange in Tape B securities from $0.0030 per share to $0.0028 per share; (ii) simplify the pricing for adding and removing non-displayed liquidity, as described in further detail below, by imposing standard fees and providing standard rebates rather than variable pricing based on trade size; and (iii) making modifications to certain of the Exchange's non-standard routing charges.

(i) Reduction of Tape B Rebate

The Exchange proposes to reduce the rebate provided to Members who add liquidity to the Exchange in Tape B securities from $0.0030 per share to $0.0028 per share. The Exchange believes that this proposed fee change is consistent with its long-term goal of providing access to the Exchange at competitive rates that do not expose the Exchange to significant losses or capital outlays. In addition, a $0.0028 per share rebate is consistent with the rebate for adding liquidity in Tape A and Tape C securities currently provided by the NASDAQ Stock Market LLC (''NASDAQ'') to NASDAQ members who are in the top volume tier for purposes of the NASDAQ fee schedule.[5] The Exchange also proposes to add to its fee schedule a descriptive chart that depicts the standard fees charged and rebates provided for executions on the Exchange in Tape A, B, and C securities.

(ii) Pricing for Non-Displayed Order Types

The Exchange currently charges fees for removing non-displayed liquidity and provides rebates for adding non-displayed liquidity [6] based on a pricing chart that varies depending on the size of the transaction (this pricing is referred to by the Exchange as ''Dark Match'' pricing on the current fee schedule). The Exchange proposes to simplify this pricing structure by: (i) Imposing a fee of $0.0025 per share for all orders that remove non-displayed liquidity, thus establishing a single rate for removal of any liquidity, and (ii) providing a rebate of $0.0020 per share for all orders that add non-displayed liquidity. These are the same rates as the Exchange charges and rebates today for trades with a size between 1 and 500 shares. The Exchange believes that standardizing the Dark Match pricing structure will benefit both the Exchange and Members of the Exchange by alleviating confusion related to the Exchange's fees and rebates. In addition, the Exchange believes that the standard fee and rebate rates it proposes are reasonable.

(iii) Changes to Non-Standard Routing Charges

As described below, the Exchange also proposes certain changes to non-standard routing charges, in part, to account for changes made by other market centers. First, the Exchange proposes to simplify the routing charges applicable to Destination Specific Orders sent to all market centers that display Protected Quotations [7] other than the NYSE (each a ''Protected Market Center''), by imposing a standard $0.0029 charge per share for all such orders. This change will make clear that all Destination Specific Orders routed to Protected Market Centers will be charged the same fee without reference to any exceptions, other than the exception for Destination Specific Orders routed to NYSE. The Exchange believes that more consistency for routing fees is preferable to a complicated fee structure with multiple varying rates. This change will result in an increase to the fee charged for Destination Specific Orders routed to NYSE Arca Equities (''NYSE Arca''), from $0.0028 per share to $0.0029 per share. This change is due to recently announced increases to the fees charged by NYSE Arca.[8] Second, the Exchange proposes to increase the fee for Destination Specific Orders sent to NYSE from $0.0009 per share to $0.0019 per share. This change is due to recently announced increases to the fees charged by NYSE.[9] The Exchange also proposes to delete a reference to Destination Specific Orders for ETFs sent to NYSE, because this distinction is no longer relevant; all Destination Specific Orders sent to NYSE will be charged a fee of $0.0019 per share. Third, the Exchange proposes to reduce the fee charged for routing of Directed ISO's from $0.0035

[5] *See* NASDAQ Rule 7018(a)(1) and (2).

[6] Non-displayed order types subject to this pricing include all Pegged Orders, Mid-Point Peg Orders, and Non-Displayed Orders, which order types are described in BATS Rule 11.9. Reserve Orders and Discretionary Orders are not subject to this pricing.

[7] As defined in BATS Rule 1.5(s).

[8] In a joint notice distributed by email, NYSE and NYSE Arca notified their members of fee changes that are anticipated to become effective on March 1, 2009.

[9] *See supra* note 7.

per share to $0.0033 per share. The Exchange is reducing its fee for such orders to encourage use of the Exchange's Directed ISO order types.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[10] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[11] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The Exchange believes that its fees and credits are competitive with those charged by other venues and that the various changes it has proposed to simplify its fee schedule will benefit both the Exchange and Members of the Exchange. For those proposed changes that will result in increased fees charged to Members or lower rebates received by Members, such as the reduction of the rebate in Tape B securities, the Exchange believes that any additional revenue it receives will allow the Exchange to devote additional capital to its operations, which may, in turn, benefit Members of the Exchange. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

*(B) Self-Regulatory Organization's Statement of Burden on Competition*

The Exchange does not believe that the proposed rule change imposes any burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and Rule 19b-4(f)(2) thereunder,[13] because it establishes or changes a due, fee or other charge imposed on members by the Exchange. Accordingly, the proposal is effective upon filing with the Commission.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal 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 No. SR–BATS–2009–007 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–BATS–2009–007. 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 changes 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 BATS. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2009–007 and should be submitted on or before April 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–5206 Filed 3–10–09; 8:45 am]

**BILLING CODE 8011–01–P**

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b-4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59496; File No. SR–BSECC–2009–01]**

## Self-Regulatory Organizations; Boston Stock Exchange Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Certificate of Incorporation of The NASDAQ OMX Group, Inc.

March 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 17, 2009, Boston Stock Exchange Clearing Corporation (''BSECC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by BSECC. BSECC filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(3) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

BSECC is filing this proposed rule change with regard to proposed changes to the Restated Certificate of Incorporation (''Certificate'') of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). The

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(3).

proposed rule change will be implemented as soon as practicable following filing with the Commission. The text of the proposed rule change is available at *http://www.nasdaqtrader.com/Trader.aspx?id=BSECCIE2009* 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, BSECC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. BSECC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ OMX is proposing to make amendments to its Certificate. As provided in Articles XI and XII of the NASDAQ OMX By-Laws, proposed amendments to the Certificate are to be reviewed by the Board of Directors of each self-regulatory subsidiary of NASDAQ OMX, and if any such proposed amendment must be filed with or filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder before such amendment may be effective, then such amendment shall not be effective until filed with or filed with and approved by the Commission as the case may be. The governing boards of the NASDAQ Stock Market LLC (''NASDAQ Exchange''), NASDAQ OMX BX, Inc. (''BX''), NASDAQ OMX Phlx, Inc. (''Phlx''), BSECC, and Stock Clearing Corporation of Philadelphia (''SCCP'') have each reviewed the proposed change and determined that it should be filed with the Commission.[5] The changes to the Certificate are limited in scope, and under Delaware law, they do not require approval by the stockholders of NASDAQ OMX.

Specifically, NASDAQ OMX proposes to eliminate its Certificate of Designations, Preferences and Rights of Series D Preferred Stock, and all matters set forth therein. NASDAQ OMX's Series D Stock was created in 2005 for the purpose of allowing National Association of Securities Dealers, Inc. to retain voting control over NASDAQ OMX's predecessor, The Nasdaq Stock Market, Inc. In connection with the NASDAQ Exchange commencing operations as a national securities exchange, the sole share of Series D Stock was redeemed in December 2006. Under Delaware law, both a certificate of designations (designating a series of preferred stock) and a certificate of elimination (eliminating a previously adopted designation) are deemed to be amendments to NASDAQ OMX's Certificate.

2. Statutory Basis

BSECC believes that the proposed rule change is consistent with provisions of Section 17A of the Act,[6] in general, and with Section 17A(b)(3)(A) of the Act,[7] in particular, in that it is designed to ensure that BSECC is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions. The proposed change will enhance the clarity of NASDAQ OMX's governance documents by eliminating provisions relating to a series of preferred stock that is no longer outstanding.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

BSECC does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(3)[9] thereunder because the proposal is concerned solely with the administration of BSECC. At any time within sixty days of the filing of such 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–BSECC–2009–01 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–BSECC–2009–01. 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. The text of the proposed rule change is available at BSECC, the Commission's Public Reference Room, and *http://www.nasdaqtrader.com/Trader.aspx?id=BSECCIE2009.* 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–BSECC–2009–01 and

[4] The Commission has modified the text of the summaries prepared by BSECC.

[5] The NASDAQ Exchange, Phlx, BX, BSECC, and SCCP have each submitted this proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(A).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(3).

should be submitted on or before April 1, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–5210 Filed 3–10–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59515; File No. SR–CBOE–2009–014]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Temporary Membership Status and Interim Trading Permit Access Fees

March 5, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 27, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adjust (i) the monthly access fee for persons granted temporary CBOE membership status (''Temporary Members'') pursuant to Interpretation and Policy .02 under CBOE Rule 3.19 (''Rule 3.19.02'') and (ii) the monthly access fee for Interim Trading Permit (''ITP'') holders under CBOE Rule 3.27. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal/*), at the Exchange's Office of the Secretary, 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, 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 these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The current access fee for Temporary Members under Rule 3.19.02[2] and the current access fee for ITP holders under Rule 3.27[3] are both $10,471 per month. Both access fees are currently set at the indicative lease rate (as defined below) for February 2009. The Exchange proposes to adjust both access fees effective at the beginning of March 2009 to be equal to the indicative lease rate for March 2009 (which is $9,809). Specifically, the Exchange proposes to revise both the Temporary Member access fee and the ITP access fee to be $9,809 per month commencing on March 1, 2009.

The indicative lease rate is defined under Rule 3.27(b) as the highest clearing firm floating monthly rate[4] of the CBOE Clearing Members that assist in facilitating at least 10% of the CBOE transferable membership leases.[5] The Exchange determined the indicative lease rate for March 2009 by polling each of these Clearing Members and obtaining the clearing firm floating monthly rate designated by each of these Clearing Members for that month.

The Exchange used the same process to set the proposed Temporary Member and ITP access fees that it used to set the current Temporary Member and ITP access fees. The only difference is that the Exchange used clearing firm floating monthly rate information for the month of February 2009 as was used to set the current access fees) in order to take into account changes in clearing firm floating monthly rates for the month of March 2009.

The Exchange believes that the process used to set the proposed Temporary Member access fee and the proposed Temporary Member access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–12 with respect to the original Temporary Member access fee.[6] Similarly, the Exchange believes that the process used to set the proposed ITP access fee and the proposed ITP access fee itself are appropriate for the same reasons set forth in CBOE rule filing SR–CBOE–2008–77 with respect to the original ITP access fee.[7]

Each of the proposed access fees will remain in effect until such time either that the Exchange submits a further rule filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] to modify the applicable access fee or the applicable status (*i.e.*, the Temporary Membership status or the ITP status) is terminated. Accordingly, the Exchange may, and likely will, further adjust the proposed access fees in the future if the Exchange determines that it would be appropriate to do so taking into consideration lease rates for transferable CBOE memberships prevailing at that time.

The procedural provisions of the CBOE Fee Schedule related to the assessment of each proposed access fee are not proposed to be changed and will remain the same as the current procedural provisions relating to the assessment of that access fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(4) of the Act,[10] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 56458 (September 18, 2007), 72 FR 54309 (September 24, 2007) (SR–CBOE–2007–107) for a description of the Temporary Membership status under Rule 3.19.02.

[3] *See* Securities Exchange Act Release No. 58178 (July 17, 2008), 73 FR 42634 (July 22, 2008) (SR–CBOE–2008–40) for a description of the Interim Trading Permits under Rule 3.27.

[4] Rule 3.27(b) defines the clearing firm floating monthly rate as the floating monthly rate that a Clearing Member designates, in connection with transferable membership leases that the Clearing Member assisted in facilitating, for leases that utilize that monthly rate.

[5] The concepts of an indicative lease rate and of a clearing firm floating month rate were previously utilized in the CBOE rule filings that set and adjusted the Temporary Member access fee. Both concepts are also codified in Rule 3.27(b) in relation to ITPs.

[6] *See* Securities Exchange Act Release No. 57293 (February 8, 2008), 73 FR 8729 (February 14, 2008) (SR–CBOE–2008–12), which established the original Temporary Member access fee, for detail regarding the rationale in support of the original Temporary Member access fee and the process used to set that fee, which is also applicable to this proposed change to the Temporary Member access fee as well.

[7] *See* Securities Exchange Act Release No. 58200 (July 21, 2008), 73 FR 43805 (July 28, 2008) (SR–CBOE–2008–77), which established the original ITP access fee, for detail regarding the rationale in support of the original ITP access fee and the process used to set that fee, which is also applicable to this proposed change to the ITP access fee as well.

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

other charges among persons using its facilities.

*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 that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and subparagraph (f)(2) of Rule 19b–4 [12] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2009–014 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–2009–014. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–CBOE–2009–014 and should be submitted on or before April 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–5205 Filed 3–10–09; 8:45 am]

**BILLING CODE 8011–01–P**

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59509; File No. SR–CBOE–2009–013]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Eliminate the CBSX Direct Connectivity Charge and the Trading Permit Application Fee

March 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on February 26, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

CBOE proposes to amend its CBOE Stock Exchange (''CBSX'') Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary, and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, 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 these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, Proposed Rule Change*

1. Purpose

The CBSX fee schedule lists the fees applicable to CBSX users. The Exchange proposes to eliminate the CBSX Trading Permit Application Fee (currently $1,000) and the CBSX Direct Connectivity Charge ($50 per quarter but waived through the first quarter of 2009). The Exchange believes that eliminating these fees will facilitate greater interest in and promote usage of CBSX. The Exchange proposes to discontinue the Trading Permit Application Fee and the CBSX Direct Connectivity Charge effective March 1, 2009.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act'') [1] in general, and furthers the objectives of Section 6(b)(4) [2] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges

[1] 15 U.S.C. 78f(b).

[2] 15 U.S.C. 78f(b)(4).

among CBOE members and other persons using its facilities.

*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 that is not necessary or appropriate in furtherance of purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act [3] and subparagraph (f)(2) of Rule 19b–4 [4] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–013 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–2009–13. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the 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–2009–13 and should be submitted on or before April 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[5]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–5208 Filed 3–10–09; 8:45 am]

**BILLING CODE 8011–01–P**

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59519; File No. SR—FINRA–2009–004]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change To Amend the Definition of TRACE-Eligible Security To Include Securities Eligible for Public Sale and Additional Securities That Are Restricted Securities

March 5, 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 February 11, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

FINRA is proposing to amend FINRA Rule 6710(a), the definition of ''TRACE-eligible security,'' to broaden the definition by deleting (i) the requirement that a debt security be registered under the Securities Act of 1933 (''Securities Act''); [3] and (ii) with respect to ''restricted securities'' as that term is defined in Securities Act Rule 144(a)(3),[4] the requirement that such securities be issued pursuant to Securities Act Section 4(2) [5] prior to being resold under Securities Act Rule 144A.[6]

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, FINRA included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

FINRA proposes to amend Rule 6710(a), the definition of ''TRACE-eligible security,'' to eliminate two aspects of the requirement therein that such securities be ''(1) registered under the Securities Act; or (2) issued pursuant to Section 4(2) of the Securities Act and purchased or sold pursuant to Securities Act Rule 144A.'' The proposed rule change eliminates

[1] U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

[3] 15 U.S.C. 77a *et seq.*

[4] 17 CFR 230.144(a)(3).

[5] 15 U.S.C. 77d(2).

[6] 17 CFR 230.144A.

the requirement that a TRACE-eligible security be registered under the Securities Act,[7] thus including more corporate debt securities, and restates and broadens the provision applicable to ''restricted securities'' as defined in Securities Act Rule 144(a)(3),[8] to include any ''restricted security'' sold pursuant to Securities Act Rule 144A.[9]

*Debt Securities Eligible for Public Sale*

The current definition of ''TRACE-eligible security'' in Rule 6710(a) was adopted in 2002 and has not been amended. Generally, the definition is sufficiently broad to require the reporting of, and provide price transparency for, a substantial portion of corporate bonds that are eligible for public sale (*i.e.*, they are freely tradable because they are not ''restricted securities'' as defined in Securities Act Rule 144(a)(3)).[10] However, FINRA has identified several situations where corporate debt securities that are eligible for public sale in the secondary market are trading without TRACE price transparency. In many cases, the securities that are not subject to TRACE are ''exempted securities'' under Section 3 of the Securities Act.[11] For example, transactions in corporate debt securities that are issued subject to the jurisdiction and approval of a court of competent jurisdiction in insolvency matters may be eligible for public sale and not reported to TRACE because they are not registered under the Securities Act.[12] In addition, among others, debt securities issued as part of an issuer exchange offer effected pursuant to Securities Act Section 3(a)(9) [13] and those issued by a bank or other financial institutions under Securities Act Section 3(a)(2) [14] (or another subparagraph of the section) generally are not subject to TRACE reporting and dissemination for this reason.

FINRA proposes to amend Rule 6710(a) to remove the unnecessary limitation on the scope of the definition of TRACE-eligible security by deleting the phrase ''(1) registered under the Securities Act'' from the definition. Eliminating the registration requirement will permit TRACE to capture transaction information for all debt securities that are eligible for public sale (and that otherwise meet the standards for TRACE eligibility).[15] FINRA will increase price transparency in such corporate bonds, which FINRA believes is important because many securities that are not registered but are eligible for public sale are being purchased and sold by all market participants, including retail investors. Further, FINRA's obligation to conduct surveillance in the corporate bond market is not limited to transactions in securities that are registered under the Securities Act.[16] Thus, transactions in corporate bonds that are eligible for public sale (and that otherwise meet the standards for TRACE eligibility) will be included in the audit trail to enhance the surveillance of the corporate bond market.[17] In this regard, FINRA's transaction reporting rules apply generally to any equity security that is eligible for public sale and do not consider registration as a factor. FINRA believes that including debt securities that are eligible for public sale as TRACE-eligible securities is vital to its mandate to regulate the market to promote market integrity and to protect investors.

*Rule 144A Transactions*

The current definition of TRACE-eligible security requires transaction reporting for some but not all of the large market in corporate debt securities that are ''restricted securities,'' as defined in Securities Act Rule 144(a)(3),[18] sold to ''qualified institutional buyers'' (''QIBs''), as defined in Securities Act Rule 144A(a)(1),[19] in transactions effected pursuant to Rule 144A (''Rule 144A transactions'').[20] Although FINRA believes that a significant number of ''restricted securities'' that are sold in Rule 144A[21] transactions are preceded by an offering that is exempt under Securities Act Section 4(2),[22] the limitation in the definition excludes other Rule 144A[23] transactions that should be included in the TRACE audit trail.

FINRA proposes to amend Rule 6710(a) to eliminate the requirement regarding Securities Act Section 4(2) [24] in the defined term, TRACE-eligible security. The proposed amendment would include as TRACE eligible a '''restricted security' as defined in Securities Act Rule 144(a)(3)'' [25] if it is ''sold pursuant to Securities Act Rule 144A.'' [26]

FINRA believes that there is no compelling reason to exclude corporate debt securities sold in a Rule 144A [27] transaction from the definition of TRACE-eligible security simply because such corporate debt securities are issued or offered under other exemptive

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[7] 15 U.S.C. 77a *et seq.*

[8] Securities Act Rule 144(a)(3) (17 CFR 230.144(a)(3)) defines ''restricted securities'' as:

(i) Securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or a chain of transactions not involving any public offering; (ii) Securities acquired from the issuer that are subject to the resale limitations of § 230.502(d) under Regulation D or § 230.701(c); (iii) Securities acquired in a transaction or chain of transactions meeting the requirements of § 230.144A; (iv) Securities acquired from the issuer in a transaction subject to the conditions of Regulation CE (§ 230.1001); (v) * * * ; (vi) Securities acquired in a transaction made under § 230.801 in the same extent and proportion that the securities held by the security holder of the class with respect to which the rights offering was made were, as of the record date for the rights offering, ''restricted securities'' within the meaning of this paragraph (a)(3); (vii) Securities acquired in a transaction made under § 230.802 to the same extent and proportion that the securities that were tendered or exchanged in the exchange offer or business combination were ''restricted securities'' within the meaning of this paragraph (a)(3); and (viii) Securities acquired from the issuer in a transaction subject to an exemption under section 4(6) (15 U.S.C. 77d(6)) of the Act.

[9] 17 CFR 230.144A. The proposed rule change does not affect the exclusions currently in the definition of ''TRACE-eligible security,'' which are: (i) Debt issued by a government-sponsored entity; and (ii) debt that is a mortgage-backed or asset-backed security, a collateralized mortgage obligation, or a money market instrument having a maturity at issuance of one year or less.

[10] 17 CFR 230.144(a)(3).

[11] 15 U.S.C. 77c.

[12] 15 U.S.C. 77a *et seq.* If an insolvent corporation is reorganized under Chapter 11 of the U.S. Bankruptcy Code, frequently new debt securities are issued. The issuance is subject to the approval of the trustee and the securities are not required to be registered under the Securities Act. *See, e.g.*, U.S. Bankruptcy Code, 11 U.S.C. 101 *et seq.*

[13] 15 U.S.C. 77c(a)(9). For example, an issuer may exchange an issue of debt securities that are registered under the Securities Act (and subject to both TRACE reporting and dissemination) for a new security that is not registered in reliance upon Securities Act Section 3(a)(9) (15 U.S.C. 77c(a)(9)), which permits such exchanges without registration of the new security. Although the exchanged security was TRACE-eligible, the new security is not because it is not registered as required in Rule 6710(a).

[14] 15 U.S.C. 77c(a)(2).

[15] To be a TRACE-eligible security, a security must also be U.S. dollar denominated, depository eligible and issued by a U.S. and/or foreign private issuer. The credit rating (or lack of a rating) of a security does not impact TRACE eligibility.

[16] 15 U.S.C. 77a *et seq.*

[17] FINRA is aware that as a result of these amendments certain ''TRACE-eligible securities'' may not be subject to the notice and informational requirements of Rule 6760, and as a result initially may not be included in the TRACE Issue Master. As noted in FINRA's Trade Reporting Notice, dated February 22, 2008, if a firm has a reporting obligation under Rule 6730 in a TRACE-eligible security that is not included in the TRACE Issue Master, the firm must notify FINRA immediately and provide the CUSIP and other information necessary for FINRA to update the TRACE Issue Master and enable the firm to promptly report the transaction to TRACE and comply with its obligations under Rule 6730.

[18] 17 CFR 230.144(a)(3).

[19] 17 CFR 230.144A(a)(1).

[20] 17 CFR 230.144A.

[21] 17 CFR 230.144A.

[22] 15 U.S.C. 77d(2).

[23] 17 CFR 230.144A.

[24] 15 U.S.C. 77d(2).

[25] 17 CFR 230.144(a)(3).

[26] 17 CFR 230.144A.

[27] 17 CFR 230.144A.

provisions of the Securities Act.[28] For example, in a global offering, some debt securities may be issued as part of a foreign tranche pursuant to Regulation S.[29] Under the proposed amendment, U.S. resales of securities from that tranche effected as Rule 144A [30] transactions would be required to be reported to TRACE. The proposed amendment regarding Rule 144A [31] transactions will allow FINRA to obtain a more complete audit trail of Rule 144A [32] transactions in corporate bonds. This additional transaction data will enhance the regulatory surveillance of the corporate bond market as a whole.[33]

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

*2. Statutory Basis*

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[34] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will provide FINRA with heightened capabilities to regulate and conduct surveillance in the corporate debt securities markets, enhance market transparency and protect investors and other market participants by including in TRACE certain corporate debt securities that currently are traded in the same markets in which TRACE-eligible securities are traded by the same market participants and investors.

*B.Self-Regulatory Organization's Statement on Burden on Competition*

FINRA does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–004 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–004. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–004 and should be submitted on or before April 1, 2009.[35]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–5203 Filed 3–10–09; 8:45 am]

**BILLING CODE 8011–01–P**

[28] 15 U.S.C. 77a *et seq.*

[29] 17 CFR 230.901–905.

[30] 17 CFR 230.144A.

[31] 17 CFR 230.144A.

[32] 17 CFR 230.144A.

[33] Currently, as provided in Rule 6750, FINRA does not disseminate Securities Act Rule 144A transactions, and FINRA does not propose to amend Rule 6750. *See* e-mail from Sharon Zackula, Associate Vice President and Associate General Counsel, FINRA, to Geoffrey Pemble, Special Counsel, Division of Trading and Markets, Commission, dated March 4, 2009.

[34] 15 U.S.C. 78o–3(b)(6).

[35] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59495; File No. SR–FINRA–2008–052]**

## Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of a Proposed Rule Change Relating to the Adoption of FINRA Rule 2140 (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) in the Consolidated FINRA Rulebook

March 3, 2009.

**I. Introduction**

On October 29, 2008, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. [''NASD'']) filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–FINRA–2008–052 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on January 27, 2009.[2] No comment letters were received. For the reasons discussed below, the Commission is

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 59253 (January 15, 2009), 74 FR 4792.

granting approval of the proposed rule change.

**II. Description**

The proposed rule change adopts without material change NASD Interpretive Material 2110–7 (IM–2110–7) (Interfering With the Transfer of Customer Accounts in the Context of Employment Disputes) as a FINRA rule in the consolidated FINRA rulebook.

*(1) Purpose*

As part of the process of developing the new consolidated rulebook (''Consolidated FINRA Rulebook''),[3] FINRA is proposing to adopt without material change NASD IM–2110–7 as a FINRA rule in the Consolidated FINRA Rulebook. The proposed rule change would renumber NASD IM–2110–7 as FINRA Rule 2140 in the Consolidated FINRA Rulebook.

(A) Background

NASD IM–2110–7 provides that it shall be inconsistent with just and equitable principles of trade for a member or person associated with a member[4] to interfere with a customer's request to transfer his or her account in connection with the change in employment of the customer's registered representative provided that the account is not subject to any lien for monies owed by the customer or other *bona fide* claim. Prohibited interference includes, but is not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery, or acceptance of a written request from a customer to transfer his or her account.[5]

FINRA adopted IM–2110–7 to address the practice of delaying customer account transfers.[6] In adopting IM–2110–7, FINRA noted in a Notice to Members that, when a registered representative leaves his or her firm for a position at a different firm, clients serviced by the registered representative may decide to continue their relationship with the registered representative by transferring their accounts to the registered representative's new firm. FINRA expressed concern that the registered representative's former firm, concerned that its former employee may have breached his or her employment contract by sharing client information with the new firm or by soliciting clients to transfer their accounts to the new firm, sometimes would seek a court order to prevent the transfer of accounts. FINRA noted that in a prior Notice to Members it had already alerted members that unnecessary delays in transferring customer accounts, including delays accompanied by attempts to persuade customers not to transfer their accounts, are inconsistent with just and equitable principles of trade.[7] FINRA stated that obtaining court orders to prevent customers from following a registered representative to a different firm is similar to the unfair practice of delaying transfers that the prior Notice had warned about.

In adopting IM–2110–7, FINRA further stated that the Interpretive Material does not affect the ability of member firms to use employment agreements to prevent former representatives from soliciting firm customers. Members are not prevented from pursuing other remedies they may have arising from employment disputes with former registered representatives. Rather, IM–2110–7 is limited to restricting a member from interfering with a customer's right to transfer his or her account once the customer has asked the firm to move the account.

(B) Proposal

FINRA believes that NASD IM–2110–7 is consistent with the goal of investor protection and serves the public interest. FINRA proposes to transfer NASD IM–2110–7 with only minor changes into the Consolidated FINRA Rulebook. Specifically, IM–2110–7 would be recodified with conforming revisions as a stand-alone FINRA rule rather than as interpretive material to NASD Rule 2110 (Standards of Commercial Honor and Principles of Trade).[8]

FINRA will announce the implementation date of the proposed rule change in a Regulatory Notice to be published no later than ninety days following Commission approval.

**III. Discussion**

After careful review, 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. In particular, the Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is an interpretation to an existing rule of NASD that is being adopted without material change to the FINRA rulebook. The proposed rule change should continue to protect investors and the public interest by addressing interference with the transfer of customer accounts in the context of employment disputes between registered representatives and their former firms. For these reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 15A(b)(6) of the Act and the rules and regulations thereunder.[10]

**IV. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–

[3] The current Consolidated FINRA Rulebook includes, in addition to FINRA Rules, (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (until the completion of the rulebook consolidation process, the FINRA rulebook includes NASD Rules and Incorporated NYSE Rules, together referred to as the ''Transitional Rulebook''), in addition to the new consolidated FINRA Rules). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). For more information about the rulebook consolidation process, see FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[4] The term ''person associated with a member'' includes, among others, registered representatives. See FINRA By-Laws, Article I, Paragraph (rr).

[5] IM–2110–7 further states that nothing in the Interpretation shall affect the operation of NASD Rule 11870 (Customer Account Transfer Contracts). Generally, Rule 11870 addresses the transfer of securities account assets from one member to another member in connection with a customer request. FINRA intends to review NASD Rule 11870 and related interpretive materials as part of a later phase in the rulebook consolidation process. Note that the Commission has approved FINRA's proposed rule change to rescind, as duplicative of Rule 11870 Incorporated NYSE Rule 412 and its Interpretation. See Securities Exchange Act Release No. 58533 (September 12, 2008), 73 FR 54652 (September 22, 2008) [File No. SR–FINRA–2008–036].

[6] See NASD *Notice to Members* 02–07 (January 2002) (Interfering With Customer Account Transfers); see also Securities Exchange Act Release No. 45239 (January 4, 2002), 67 FR 1790 (January 14, 2002) [File No. SR-NASD–2001–95].

[7] NASD *Notice to Members* 79–7 (February 1979) (Fair Treatment of Customer Accounts); *see also* Securities Exchange Act Release No. 15194 (September 28, 1978) (Notice to Broker-Dealers Concerning Fair Treatment of Customer Accounts).

[8] The exact revised text of IM–2100–8 is attached as Exhibit 5 to the proposed rule change and is available at *http://www.finra.org/Industry/Regulation/RuleFilings/2008/P117330.* Similarly, FINRA has transferred NASD Rule 2110 to the Consolidated FINRA Rulebook without change as FINRA Rule 2010. Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) [File No. SR–FINRA–2008–028].

[9] 15 U.S.C. 78o–3(b)(6).

[10] In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

FINRA–2008–052) be and hereby is approved.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[11]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–5212 Filed 3–10–09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59497; File No. SR–BX–2009–015]**

## Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change Relating to Order Handling and Exposure Periods on the Boston Options Exchange Facility

March 4, 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 February 27, 2009, NASDAQ OMX BX, Inc. (the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain Rules of the Boston Options Exchange (''BOX'') to reduce the order handling and exposure periods contained within the BOX Rules from three seconds to one second. The text of the proposed rule change is available from the principal office of the Exchange, at the Commission's Public Reference Room and also on the Exchange's Internet Web site at *http://nasdaqomxbx.cchwallstreet.com/NASDAQOMXBX/Filings/*.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to reduce the order handling and exposure periods from three seconds to one second in the Supplementary Material to Section 17 (Customer Orders and Order Flow Providers) and in Section 18 (The Price Improvement Period (''PIP'')) of Chapter V (Doing Business on BOX) of the BOX Rules. These sections require that orders entered into the BOX limit order book (''BOX Book''), or the PIP, respectively, are currently exposed to all market participants for three seconds before the orders are automatically executed, giving Options Participants (''Participants'') an opportunity to enter additional trading interests.

Chapter V of the BOX Rules outlines certain requirements related to order handling by BOX Options Participants and Market Makers. A Participant may not execute an order it represents as agent with a facilitation or a solicited order unless it complies with the order exposure requirements contained in Chapter V, Section 17, Supplementary Materials .02 and .03. Specifically, Supplementary Material .02 to Section 17 provides that an Options Participant may not cause the execution of an order it represents as agent on BOX through the use of orders it solicited unless the agency order is first exposed to the BOX Book for at least three seconds. Furthermore, Supplementary Material .03 to Section 17 provides that an order flow provider (''OFP'') may not execute as principal an order it represents as agent unless the OFP (i) exposes the order to the BOX Book for three seconds; (ii) has been bidding or offering on BOX for at least three seconds prior to receiving an agency order that is executable against such bid or offer; or (iii) sends the agency order to the PIP or Universal Price Improvement Period (''UPIP''). Under the proposal, these time periods would be reduced to one second.

The Exchange is also proposing to reduce the PIP in Section 18 of Chapter V from three seconds to one second. Currently the PIP allows Participants to designate certain customer orders for price improvement and submit such orders to the PIP with a matching contra order (''Primary Improvement Order''). Once an order is submitted to the PIP, BOX broadcasts a message to Options Participants that commences the PIP and (1) states that a Primary Improvement Order has been processed; (2) contains information concerning series, size, price and side of the market of the order; and (3) states when the PIP will conclude. This proposal would reduce the PIP to one second.

When approving the existing three second order handling and exposure periods, the Commission concluded that, in the electronic environment of BOX, reducing these time periods to three seconds was fully consistent with the electronic nature of the BOX market.[3] BOX recognized that three seconds would not be long enough to allow human interaction with orders. Rather, Participants have been operating with sufficiently automated electronic systems so that they can react and respond to orders in a meaningful way within three seconds and BOX fully anticipates that this will continue within the proposed one second time frame. BOX believes that further reducing its order handling and exposure periods from three seconds to one second will benefit all market participants. BOX believes it is in all participants' best interests to minimize the time of the exposure period while continuing to allow Participants adequate time to electronically respond, as both the order being exposed and Participants responding are subject to market risk during the exposure period. Indeed, most participants wait until the end of the last second of the current three second period before responding to exposed orders so as to minimize market risk. BOX believes that one second will continue to provide market participants with sufficient time to respond, compete, and provide price improvement for orders and will provide investors and other market participants with more timely executions, thereby reducing their market risk.

Recently, BOX distributed a survey to Participants that regularly participate in the PIP or would otherwise be affected by this proposal. To substantiate that its Participants could receive, process, and communicate a response back to BOX within one second, the survey asked Participants to identify (i) approximately how many milliseconds it takes for an order broadcast from BOX

[11] 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. 53854; (May 24, 2006), 71 FR 30975 (May 31, 2006) (SR–BSE–2006–23).

to reach their systems; (ii) approximately how many milliseconds it takes their systems to generate a response to an order broadcast; (iii) approximately how many milliseconds it takes their response to an order broadcast to reach BOX; and (iv) whether or not a reduction of the PIP and facilitation and solicitation order exposure time periods to one second would impair their ability to participate in BOX PIPs or facilitation or solicitation orders. The survey results indicate that the time it takes a message to travel between BOX and its Participants typically is not more than fifty milliseconds each way.[4] The survey also indicated that it typically takes not more than ten milliseconds for Participant systems to process the information and generate a response. Thus, the survey indicated that it typically takes at most 110 milliseconds for Participants to receive, process, and respond to broadcast messages related to the PIP or facilitation or solicitation related broadcasts and for such responses to reach BOX. Additionally, Participants indicated that reducing the exposure period to one second would not impair their ability to participate in orders executed through the PIP or facilitation or solicitation orders.[5] The Exchange believes that this information provides additional support for its assertion that reducing the exposure periods from three seconds to one second will continue to provide Participants with sufficient time to ensure effective interaction with orders.

BOX Participants are able to respond to PIP orders in less than one second and this rule change could provide additional customer orders an opportunity for price improvement because it will reduce the market risk for Participants that are required to guarantee an execution at the National Best Bid/Offer (''NBBO'') or better. Accordingly, BOX does not believe it is necessary or beneficial to the orders being exposed to continue to subject them to market risk for a full three seconds.

After Commission approval of the proposal, and at least one week prior to implementation of the rule change, BOXR will issue a regulatory circular to Participants. The regulatory circular will inform Participants of the implementation date of the reduction of the order handling and exposure periods from three seconds to one second. This will give Participants an opportunity to make any necessary modifications to coincide with the implementation date.

2. Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[6] in general, and Section 6(b)(5) of the Act,[7] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. In particular, the proposed rule change will provide investors with more timely execution of their options orders, while ensuring that there is an adequate exposure of all crossing orders on BOX.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Exchange has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice in the **Federal Register**. The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2009–015 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–015. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–015 and should

[4] Seventeen firms responded to the survey. Thirteen of the seventeen responded to the specific timing questions.

[5] All of the thirteen Participants that responded to the specific timing questions, and two of the four Participants that did not answer the specific timing questions, indicated that reducing the exposure time periods to one second would not impair their ability to participate in BOX PIPs or facilitation or crossing orders.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

be submitted on or before March 26, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–5130 Filed 3–10–09; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59510; File No. SR–NYSE–2009–21]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange LLC To Temporarily Suspend Its Price Continued Listing Standard and Extend the Period of the Temporary Lowering of Its Average Global Market Capitalization Continued Listing Standard

March 4, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 26, 2009, New York Stock Exchange, LLC (the ''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal eligible for immediate effectiveness pursuant to Rule 19b–4(f)(6)[3] under the Exchange Act. 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 (i) suspend until June 30, 2009, the application of its price criteria for capital and common stock set forth in Section 802.01C of the Exchange's Listed Company Manual (the ''Manual''), and (ii) extend until the same date the temporary lowering of the average market capitalization requirement of Section 802.01B of the Manual. The text of the proposed rule change is available on the Exchange's Web site (*http://www.nyse.com*), at the Exchange's Office of the Secretary 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 these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

In recent months, the U.S. and global equities markets have experienced extreme volatility and a precipitous decline in trading prices of many securities. As a consequence of these market conditions, the Exchange has experienced an unusually high number (as compared to historical levels) of listed companies having stock prices that have either fallen below the Exchange's $1.00 price requirement for capital and common stock set forth in Section 802.01C of the Manual (*i.e.*, the average closing price of their stock has fallen below $1.00 over a consecutive 30 trading day period)[4] or having an average closing stock price that is below $2.00. In response, the Exchange proposes to suspend the application of the stock price requirement of Section 802.01C until June 30, 2009. This proposed suspension will provide temporary relief to companies in response to the extreme volatility and a precipitous decline in trading prices of many securities experienced in the U.S. and global equities markets, which the Commission had acknowledged constituted a threat to the fair and orderly functioning of the securities markets and could lead to a crisis of confidence among investors regarding the viability of companies whose stock prices have declined significantly.[5]

Under the proposed suspension of the Exchange's stock price continued listing standard, companies will not be notified of new events of noncompliance with the price requirement during the suspension period. Companies that are in a compliance period at the time of commencement of the suspension[6] will still be deemed to have regained compliance during the rule suspension period if, at the expiration of their respective six-month cure periods established prior to the commencement of the rule suspension, they have a $1.00 closing share price on the last trading day of the period and a $1.00 average share price based on the preceding 30 trading days. In addition, any company that is in a compliance period at the time of commencement of the rule suspension can return to compliance during the suspension if at the end of any calendar month during the suspension such company has a $1.00 closing share price on the last

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Section 802.01C provides that a company will be considered to be below compliance standards if the average closing price of a security as reported on the consolidated tape is less than $1.00 over a consecutive 30 trading day period. Once notified, the company must bring its share price and average share price back above $1.00 by six months following receipt of the notification. A company is not eligible to follow the cure procedures outlined in Sections 802.02 and 802.03 with respect to this criteria. The company must, however, notify the Exchange, within 10 business days of receipt of the notification, of its intent to cure this deficiency or be subject to suspension and delisting procedures. In the event that at the expiration of the six-month cure period, both a $1.00 share price and a $1.00 average share price over the preceding 30 trading days are not attained, the Exchange will commence suspension and delisting procedures. Notwithstanding the foregoing, if a company determines that, if necessary, it will cure the price condition by taking an action that will require approval of its shareholders, it must so inform the Exchange in the above referenced notification, must obtain the shareholder approval by no later than its next annual meeting, and must implement the action promptly thereafter. The price condition will be deemed cured if the price promptly exceeds $1.00 per share, and the price remains above the level for at least the following 30 trading days.

[5] *See, e.g.*, Securities Exchange Act Release No. 58588 (September 18, 2008), 73 FR 55174 (September 24, 2008) (''The Commission is aware of the continued potential of sudden and excessive fluctuations of securities prices and disruption in the functioning of the securities markets that could threaten fair and orderly markets. Given the importance of confidence in our financial markets as a whole, we have also become concerned about sudden and unexplained declines in the prices of securities. Such price declines can give rise to questions about the underlying financial condition of an issuer, which in turn can create a crisis of confidence without a fundamental underlying basis. This crisis of confidence can impair the liquidity and ultimate viability of an issuer, with potentially broad market consequences.'').

[6] The Exchange notes that there are not currently any companies in the Exchange's delisting appeal process that have been sent a delisting notification for noncompliance with the dollar price continued listing requirement. The Exchange also notes that it would continue to identify companies in a compliance period as below compliance for price, including by continuing to append an indicator to the company's stock ticker to identify it as being below compliance for price and including the company on a list of companies that are below compliance for price posted to the Exchange's Web site, unless the company regains compliance during the suspension. A company would continue to be subject to delisting for failure to comply with other listing requirements.

trading day of such month and a $1.00 average share price based on the 30 trading days preceding the end of such month.[7] Any company that is in a compliance period at the time of commencement of the rule suspension that does not regain compliance during the suspension period will recommence its compliance period upon reinstitution of the stock price continued listing standard and receive the remaining balance of its compliance period.[8] Following the temporary rule suspension, any new events of noncompliance with the Exchange's stock price continued listing standard would be determined based on a consecutive 30 trading-day period commencing on June 30, 2009.

In response to the current unusual market conditions, the Exchange previously adopted a policy (by means of an immediately effective rule filing[9]) providing that, through April 22, 2009, its average global market capitalization continued listing requirement will apply only to companies (including limited partnerships and real estate investment trusts (''REITs'')) whose average global market capitalization over a consecutive 30 trading-day period falls below $15 million.[10] The Exchange notes that it remains the case that an unusually high number (as compared to historical levels) of listed companies have market capitalizations close to or below $25 million over a consecutive 30 trading-day period. The Exchange considers it unlikely that the market conditions giving rise to this phenomenon will pass prior to April 22, 2009, the current end date of the temporary lowering of the Exchange's market capitalization requirements. Consequently, the Exchange proposes to extend the period for which its market capitalization continued listing standard is lowered until June 30, 2009. This will also have the benefit of conforming the end dates of the suspension of the dollar stock price continued listing requirement and the easing of the market capitalization continued listing requirement, avoiding confusion in communicating these policies to listed companies and facilitating any extension of both policies in a single filing.

The proposed suspension of the Exchange's price continued listing requirement and the proposed extension of the period of application of the temporary lower market capitalization requirement will each enable companies to remain listed in the current difficult market conditions with the prospect of a future recovery in their stock prices enabling them to comply with the applicable listing requirements upon the standards' reinstatement. During the period between now and June 30, 2009, the Exchange will consider whether it is appropriate to propose further revisions to these requirements.

The Exchange notes that this filing is based in part on a NASDAQ filing, pursuant to which NASDAQ responded to the current market conditions by temporarily suspending its bid price and market value of publicly held shares continued listing requirements through April 19, 2009.[11]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[12] of the Exchange Act, in general, and furthers the objectives of Section 6(b)(5) of the Exchange Act[13] in particular in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to remove uncertainty regarding the ability of certain companies to remain listed on the NYSE during the current highly unusual market conditions, thereby protecting investors, facilitating transactions in securities, and removing an impediment to a free and open market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[17] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay.

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[7] A company would continue to be subject to delisting for failure to comply with other listing requirements.

[8] For example, if a company is four months into its compliance period for noncompliance with the price continued listing standard when the suspension starts and the company does not regain compliance during the suspension, the company would have an additional two months starting on June 30, 2009, to regain compliance.

[9] *See* Securities Exchange Act Release No. 59299 (January 27, 2009), 74 FR 5709 (January 30, 2009) (SR–NYSE–2009–06).

[10] Section 802.01B of the Manual provides that the Exchange will promptly delist any company (including limited partnerships and REITs) if it is determined that the company has an average global market capitalization over a consecutive 30 trading-day period of less than $25 million, regardless of the original listing standard under which it listed. A company is not eligible to utilize the cure procedures set forth in Sections 802.02 and 802.03 with respect to this criterion and instead is immediately subject to the Exchange's delisting procedures set forth in Section 804 of the Manual.

[11] *See* Securities Exchange Act Release 58809 (October 17, 2008), 73 FR 63222 (October 23, 2008) (SR–NASDAQ–2008–082) for the suspension of NASDAQ's bid price and market value of publicly held shares through January 16, 2009. *See also* Securities Exchange Act Release 59219 (January 8, 2009), 74 FR 2640 (January 15, 2009), extending the suspension of these requirements to April 19, 2009. NASDAQ's continued listing requirements relating to bid price are set forth in NASAQ Marketplace Rules 4310(c)(4), 4320(e)(2)(E)(ii), 4450(a)(5), 4450(b)(4), and 4450(h)(3) and the related compliance periods are set forth in NASDAQ Marketplace Rules 4310(c)(8)(D), 4320(e)(2)(E)(ii), and 4450(e)(2). NASDAQ's continued listing requirements relating to market value of publicly held shares are set forth in NASDAQ Marketplace Rules 4310(c)(7), 4320(e)(5), 450(a)(2), 4450(b)(3) and 4450(h)(2) and the related compliance periods are set forth in Rules 4310(c)(8)(B) and 4450(e)(1).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). Pursuant to Rule 19b–4(f)(6)(iii) under the Act, the Exchange is required to give 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 determined to waive this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it will allow NYSE to immediately implement a temporary measure, until June 30, 2009, to suspend its $1.00 price continued listing requirement for capital and common stock to respond to recent market volatility and conditions. The Commission notes that this will provide certain companies with immediate relief from receiving a non-compliance or delisting notification, or from being delisted, as a result of the current market conditions. The Commission notes that this action is temporary in nature, and that following the suspension, companies currently in the compliance period will resume at the same stage and receive the remaining balance of its compliance period if they remain non-compliant with these standards. This will ensure that the temporary suspension addresses the concerns to companies and investors caused by the current market conditions, and that may result in a company's securities becoming non-compliant with the $1.00 price requirement, or unable to cure such a deficiency, due to these market conditions. The Commission also notes that the proposed rule change is substantially similar to a recent Nasdaq filing to suspend its bid price test, and thus, raises no new regulatory issues.[18] In addition, the Commission believes that waiving the operative delay is consistent with the protection of investors and the public interest because it will allow NYSE to immediately conform the end dates of the suspension of the $1.00 price requirement and the temporary lowering of the average market capitalization requirement of Section 802.01B of the Manual,[19] preventing any confusion over the end dates of these temporary modifications to the continued listing standards due to market conditions. For these reasons, the Commission designates that the proposed rule change become operative immediately upon filing.[20]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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 Exchange Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2009–21 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–2009–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2009–21 and should be submitted on or before April 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–5209 Filed 3–10–09; 8:45 am]

**BILLING CODE 8011–01–P**

[18] See *supra* note 11.

[19] See *supra* note 9.

[20] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59522; File No. SR–NYSEArca–2008–134]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend Rule 10.16, Sanctioning Guidelines

March 5, 2009.

### I. Introduction

On December 11, 2008, NYSE Arca, Inc. (''NYSE Arca'' or ''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 NYSE Arca Rule 10.16 (''Rule 10.16'' or ''Sanctioning Guidelines''). The proposed rule change was published for comment in the **Federal Register** on December 30, 2008.[3] The Commission received no comments on the proposed rule change. On February 13, 2009, NYSE Arca filed Amendment No. 1 to the proposed rule change.[4] This order approves the proposed rule change, as amended.

### II. Description

Rule 10.16 sets forth (1) general principles that apply to all determinations of sanctions in options market-related disciplinary proceedings, (2) a list of principal considerations to use to determine sanctions, and (3) a set of suggested fines and non-monetary penalties for violations of specific options rules of the Exchange (''Specific Sanctioning Guidelines). The Sanctioning Guidelines are used by various Exchange bodies (hereafter ''adjudicators'') to help determine appropriate remedial sanctions in disciplinary proceedings. The Exchange proposes to make the following

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59117 (December 18, 2008), 73 FR 79964.

[4] Amendment No. 1 makes minor, non-substantive changes to the description of the proposed rule change and to the proposed rule text. Because Amendment No. 1 is non-substantive in nature, the Commission is not publishing it for comment.

amendments to the Sanctioning Guidelines:

*A. General Principles*

The proposed rule change clarifies that the Sanctioning Guidelines are intended to apply to all persons using the facilities of the Exchange.[5] Therefore, the proposed rule change amends the Sanctioning Guidelines to replace the terms ''employee'' and ''approved person'' with the broader term ''Associated sPerson,'' which includes Allied Persons, Affiliated Persons, Approved Persons and other employees of an OTP Firm.[6] The Exchange also proposes changes to clarify that an Associated Person may be employed by an OTP Holder or OTP Firm.[7]

The Exchange proposes to amend the Sanctioning Guidelines to make clear that irrelevant incidents of misconduct should not be considered by adjudicators in determining sanctions,[8] and to allow adjudicators to use a ''reasonable calculation of loss'' for the purposes of determining restitution when actual loss cannot be calculated.[9] Because it is not always possible for adjudicators to determine actual loss, the Exchange believes that the Sanctioning Guidelines should provide adjudicators an alternative method for calculating restitution.

*B. Specific Sanctioning Guidelines*

Rule 10.16 currently contains ''Specific Sanctioning Guidelines'' for certain enumerated options order handling rules [10] and rules relating to recordkeeping and financial requirements.[11] These Specific Sanctioning Guidelines list principal considerations that adjudicators should weigh when determining sanctions for these categories of rules; provide a three-tier monetary fine system based on the number of disciplinary actions against the named party; and provide for non-monetary penalties (*e.g.*, suspensions and expulsions) for named parties in disciplinary proceedings. The proposed rule change amends the Specific Sanctioning Guidelines in Rules 10.16(e)–(f) to require that adjudicators consider the general principal considerations applicable to all violations, and to consider whether the disciplinary action is the first or subsequent disciplinary action taken against the OTP Holder, OTP Firm or Associated Person.[12] The Exchange notes that recent acts of similar misconduct may be considered aggravating factors.

The proposed rule change also replaces the three tiers of suggested fines set out in the Specific Sanctioning Guidelines with a single range of suggested fines. The Exchange believes that a single range of suggested fines will provide adjudicators greater latitude than they presently have in applying sanctions in a fair and consistent manner. The proposed rule change further amends the fine levels to increase the minimum and maximum fines that adjudicators may impose in disciplinary proceedings.[13] The Exchange notes that under its Minor Rule Violation Plan (''MRVP''), the Exchange is authorized to impose fines of up to $5,000 for minor rule violations in lieu of initiating formal disciplinary proceedings.[14] The Exchange represented that, in light of the fines permissible under the Exchange's MRVP, the current minimum monetary penalty levels in Rule 10.16 (which range between $1,000 and $5,000) are too low, given the serious nature of the violations.

Likewise, given the serious nature of the violations covered by the Sanctioning Guidelines, the Exchange believes the current maximum monetary penalty levels are also too restrictive. Therefore, in order to act as an effective deterrent against future violations, while serving as a just penalty for those who commit these violations, the Exchange proposes to increase the minimum monetary penalty to $10,000 and the maximum monetary penalty to $100,000.

The proposed rule change also amends the non-monetary penalty provision (providing for suspension, expulsion or other sanction for a named party in a disciplinary proceeding) to increase the suggested maximum term of suspensions from two years to five years. Under the current Sanctioning Guidelines, an adjudicator may suspend a named party in a formal disciplinary proceeding for up to two years or expel or permanently bar a named party for egregious rule violations. The Exchange believes that there are certain violations that could justify a suspension of more than two years, but do not justify an expulsion or a permanent bar. Therefore, the Exchange believes that increasing the maximum term of suspensions from two to five years will afford adjudicators greater flexibility in determining appropriate non-monetary sanctions.

The proposed rule change also amends Rule 10.16 to include Specific Sanctioning Guidelines for two additional rules. Proposed Rule 10.16(g) will set forth Specific Sanctioning Guidelines for violations of NYSE Arca Rule 9 (Conducting Business with the Public),[15] and proposed Rule 10.16(h) will set forth guidelines for violations of NYSE Arca Rule 11 (Business Conduct).[16] While the proposed principal considerations and non-monetary sanctions for these new Specific Sanctioning Guidelines are substantially similar to those contained in amended Rules 10.16(e)–(f), the Exchange proposes a different range of suggested fines for these two rules. The Exchange represents that violations of NYSE Arca Rules 9 and 11 are extremely serious matters. Therefore, the Exchange believes that the range of fines contained in Rules 10.16(g)–(h) should be higher than the range of fines contained in Rules 10.16(e)–(f). Accordingly, the proposed rule change provides that the suggested range of fines in Rules 10.16(g)–(h) will be from $15,000 to $150,000. The Exchange believes that these fines are appropriate given the serious nature of Rule 10.16(g)–(h) related offenses. The Exchange believes that these fines will act as an effective deterrent against future violations and serve as a just penalty for those that commit these violations.

*C. Miscellaneous Changes*

The proposed rule change makes additional amendments to the Sanctioning Guidelines as follows:

Rule 10.16(e)(2) sets forth Specific Sanctioning Guidelines for violations of the priority rules and obligations of market makers. The proposed rule

[5] The Commission notes that Rule 10.16 is applicable to the options market-related activity of NYSE Arca, and therefore by its terms is limited to options market-related disciplinary proceedings of NYSE Arca.

[6] *See* proposed NYSE Arca Rules 10.16(a) and (d)(2)–(3), (8) and (12).

[7] *See* proposed NYSE Arca Rules 10.16(d)(2)–(3), (8) and (12).

[8] *See* proposed NYSE Arca Rule 10.16(b)(2).

[9] *See* proposed NYSE Arca Rule 10.16(b)(5).

[10] *See* NYSE Arca Rule 10.16(e) (Specific Sanctioning Guidelines for Options Order Handling Rules).

[11] *See* NYSE Arca Rule 10.16(f) (Specific Sanctioning Guidelines for Recordkeeping and Financial Requirements Rules.)

[12] *See* proposed NYSE Arca Rule 10.16(e)–(f).

[13] *See* proposed NYSE Arca Rule 10.16(e)–(f).

[14] *See* NYSE Arca Rule 10.12.

[15] *See* NYSE Arca Rule 9 (Conducting Business with the Public). This rule generally consists of several provisions intended to protect public customers and their accounts.

[16] *See* NYSE Arca Rule 11 (Business Conduct). This rule generally consists of several provisions intended to prevent actions that could be deemed detrimental to the welfare and protection of investors, or conduct or proceedings inconsistent with just and equitable principles of trade.

change adds NYSE Arca Rule 6.37A [17] to Rule 10.16(e)(2) because Rule 6.37A also deals with the obligations of market makers, and thus is appropriately included in this Specific Sanctioning Guideline.

The proposed rule change eliminates references to floor official training for OTP Holders in Rule 10.16(b)(7) because the Exchange does not employ OTP Holders as floor officials.

The proposal also corrects spelling and typographical errors and makes other minor, non-substantive changes throughout the Sanctions Guidelines such as the renumbering of certain provisions and the elimination of obsolete ''Commentary'' and examples of regulatory incidents that are not relevant to determinations of sanctions.

## III. Discussion and Commission's Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of Section 6(b) [18] of the Act, and in particular, with Section 6(b)(5) [19] of the Act, which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[20]

The Commission also finds that the proposal is consistent with Section 6(b)(6) [21] of the Act, which requires that the rules of the exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of the Act and the rules and regulations thereunder.

The Exchange's proposal amends the Sanctioning Guidelines to provide more flexibility for adjudicators in crafting fair and appropriate monetary and non-monetary sanctions for violations of certain enumerated Exchange rules, and adds categories of rules that will be subject to the Sanctioning Guidelines. The proposed rule change also clarifies that the guidelines apply to all persons using the option-related facilities of the Exchange, and makes other changes that should strengthen the Exchange's disciplinary program. Accordingly, the Commission finds that the proposed rule change is consistent with the Act.

## IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR–NYSEArca–2008–134) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–5202 Filed 3–10–09; 8:45 am]

**BILLING CODE 8011–01–P**

[17] *See* NYSE Arca Rule 6.37A (Obligations of Market Makers—OX).

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

[20] 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).

[21] 15 U.S.C. 78f(b)(6).

[22] 15 U.S.C. 78s(b)(2).

[23] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59521; File No. SR–NYSEArca–2009–15]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Rule Change by NYSE Arca, Inc. Implementing Fee Change

March 5, 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 February 27, 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.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the ''Schedule''). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on March 2, 2009. The amended section of the Schedule is included as Exhibit 5 hereto.[4] A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to make multiple changes to its Schedule that will take effect on March 2, 2009. A more detailed description of the proposed changes follows.

Tier 1 Rate Changes

Tier 1 rates are applied to customers with an average daily share volume per month greater than 90 million shares in Tape A, B and C, including adding liquidity of more than 45 million shares. In Tape A and Tape C securities the Exchange will continue its inverted pricing structure, but proposes a new rebate of $0.0029 for orders that add liquidity and new fee of $0.0028 for orders that remove liquidity. Previously in Tape A and Tape C securities the Exchange paid a rebate of $0.0028 for orders that added liquidity and charged a fee of $0.0027 for orders that removed liquidity.

Mid-Point Passive Liquidity Orders

The Exchange proposes a rebate of $0.0020 per share for resting Mid-point Passive Liquidity (''MPL'') Orders [5] in Tape A and Tape C securities for all customers. Previously the Exchange paid a rebate of $0.0015 for resting MPL orders in Tape A and Tape C securities. The Exchange proposes a rebate of $0.0010 per share for resting MPL orders

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Commission notes that while provided in Exhibit 5 to the filing, the text of the proposed rule change is not attached to this notice but is available at the Commission's Public Reference Room and at *http://www.nyse.com*.

[5] The MPL order is an undisplayed limit order that offers price improvement to customers by executing at the mid-point of the National Best Bid and Offer (NBBO). MPL orders will generally interact with all order types including contra MPLs, but excluding cross or directed orders.

in Tape B securities for all customers. Previously the Exchange did not pay a rebate for resting MPL orders in Tape B securities.

Orders Routed to the NYSE in Tape A

The Exchange proposes a $0.0018 per share fee for orders in Tape A securities routed outside the Book to the NYSE for customers qualifying for Tier 1, Tier 2 or the Take Tier. Previously the Exchange charged $0.0008 per share for orders in Tape A securities routed outside the Book to the NYSE in Tier 1, Tier 2, and the Take Tier. The Exchange proposes a $0.0020 per share fee for orders in Tape A securities routed outside the Book to the NYSE for customers qualifying for Basic Rates.

The following changes apply universally to all tiered pricing and basic rate pricing in Tape A securities. The Exchange proposes a $0.0016 per share fee for Primary Sweep Orders in Tape A securities routed outside the book to the NYSE. Previously the Exchange charged $0.0006 per share fee for Primary Sweep Orders in Tape A securities routed outside the book to the NYSE. The Exchange also proposes a $0.0018 per share fee for Primary Only Plus (''PO+'') Orders routed to the NYSE that remove liquidity. Previously the Exchange charged an $0.0008 per share fee for Primary Only Plus (''PO+'') Orders routed to the NYSE that removed liquidity. The Exchange will continue to charge no fee for PO and PO+ Orders routed to the NYSE for participation at the open. To compliment the new PO+ fee, the Exchange proposes a $0.0010 per share credit for PO+ Orders that provide liquidity to the NYSE. Previously the Exchange did not pay a rebate for PO+ Orders providing liquidity to the NYSE. For PO+ Market-On-Close (''MOC'') and Limit-On-Close (''LOC'') Orders routed to the NYSE, the Exchange proposes a $0.0005 per share fee. Previously the Exchange charged a $0.0004 per share fee PO+ MOC and LOC Orders routed to the NYSE.

Basic Rate Changes

Basic Rates apply to those customers that do not reach one of the volume tiered pricing levels. The Exchange proposes a Basic Rate fee of $0.0030 for orders that remove liquidity in Tape A and Tape C securities. This fee was previously $0.0029. The rebate for orders that add liquidity will remain unchanged at $0.0023.

IOI Tier Changes

The Exchange also proposes adding an additional IOI Tier. The new Tier 1 will pay a rebate of $.0012 per share for ETP Holders and Market Makers that send an IOI to the Exchange resulting in an execution with an average daily share volume per month greater than or equal to 10 million shares. The current Tier 1 will become the new Tier 2 and will pay a rebate of $0.001 per share for ETP Holders and Market Makers that send an IOI to the Exchange resulting in an execution with an average daily share volume per month between 5 million shares and 9,999,999 shares. Finally, the current Tier 2 will become the new Tier 3 and will pay a rebate of $0.0005 per share for ETP Holders and Market Makers that send an IOI to the Exchange resulting in an execution with an average daily share volume per month between 2.5 million shares and 4,999,999 shares.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''), in general, and Section 6(b)(4) of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed rates are part of the Exchange's continued effort to attract and enhance participation on the Exchange, by offering attractive rebates for liquidity providers and volume-based incentives. The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly to our Users.

*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 foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–15 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–2009–15. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–15 and should be submitted on or before April 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–5204 Filed 3–10–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59518; File No. SR–NYSEArca–2009–01]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change Relating to the Reduction of the Annual Fee for Certain Issues Listed Under Rule 5.2(j)(6)

March 5, 2009.

### I. Introduction

On January 6, 2009, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'') and Rule 19b–4 thereunder,[2] a proposed rule change amending its Schedule of Fees and Charges for Exchange Services (''Fee Schedule'') to revise the Annual Fees applicable to securities listed in calendar year 2009 under Rule 5.2(j)(6) on NYSE Arca, LLC (''NYSE Arca Marketplace''), the equities facility of NYSE Arca Equities. The proposed rule change was published for comment in the **Federal Register** on February 2, 2009.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

### II. Description of the Proposed Rule Change

NYSE Arca proposes amending the Exchange's Fee Schedule to revise the Annual Fee applicable to securities listed on the NYSE Arca Marketplace in calendar year 2009 under Rule 5.2(j)(6) (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Indexed-Linked Securities). Specifically, the Exchange proposes to add new footnote 10 to the Fee Schedule to state that, during 2009, the Annual Fee for an issue of securities listed under Rule 5.2(j)(6) of up to 500,000 shares outstanding would be $5,000, pro-rated based on days remaining in 2009. For example, under the proposed rule change, if an Equity Index-Linked Security lists on the NYSE Arca Marketplace on July 1, 2009 with 500,000 shares outstanding, such security would pay a pro-rated Annual Fee for 2009 of $2,500 ($1/2 \times \$5{,}000$).[4] The proposed reduced Annual Fee of $5,000 or less would apply for calendar year 2009 to issues newly listed on the NYSE Arca Marketplace beginning as of January 1, 2009, and would not apply to issues listed prior to or after calendar year 2009.

### III. Discussion and Commission's Findings

The Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[5] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(4)[6] of the Act, which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.[7] The Commission notes that the proposed fee reduction of $5,000 or more would only apply to certain securities with up to 500,000 shares outstanding, which is far less than the 6 million shares outstanding to which the current Annual Fee of $10,000 applies. Moreover, the Commission notes that the fee reduction would only be temporary and that the Exchange hopes that the temporary reduction in the Annual Fee for certain products may provide an incentive for issuers to introduce and list more of such products on the NYSE Arca marketplace and thereby, increase competition among such products.

### IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSEArca-2009–01) 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. E9–5207 Filed 3–10–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–59494; File No. SR–SCCP–2009–01]**

## Self-Regulatory Organizations; Stock Clearing Corporation of Philadelphia; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Certificate of Incorporation of The NASDAQ OMX Group, Inc.

March 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 17, 2009, Stock Clearing Corporation of Philadelphia (''SCCP'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by SCCP. SCCP filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(3) thereunder[3] so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

SCCP is filing this proposed rule change with regard to proposed changes to the Restated Certificate of Incorporation (''Certificate'') of its parent corporation, The NASDAQ OMX Group, Inc. (''NASDAQ OMX''). The proposed rule change will be implemented as soon as practicable following filing with the Commission. The text of the proposed rule change is available at *http://www.nasdaqtrader.com/Trader.aspx?id=SCCPApprovedRules*

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[8] 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. 59270 (Jan. 21, 2009), 74 FR 5880.

[4] Under the current Fee Schedule for Structured Products, which include securities listed under Rule 5.2(j)(6), the Annual Fee ranges from $10,000 to $55,000, based on the total number of securities outstanding per listed issue. The current Annual Fee for issues with up to 6 million shares outstanding is $10,000.

[5] 15 U.S.C. 78(f).

[6] 15 U.S.C. 78f(b)(4).

[7] In approving the proposed rule change, the Commission notes that it has considered the proposed rules' impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[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] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(3).

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, SCCP included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. SCCP has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[4]

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

NASDAQ OMX is proposing to make amendments to its Certificate. As provided in Articles XI and XII of the NASDAQ OMX By-Laws, proposed amendments to the Certificate are to be reviewed by the Board of Directors of each self-regulatory subsidiary of NASDAQ OMX, and if any such proposed amendment must be filed with or filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder before such amendment may be effective, then such amendment shall not be effective until filed with or filed with and approved by the Commission as the case may be. The governing boards of the NASDAQ Stock Market LLC (''NASDAQ Exchange''), NASDAQ OMX BX, Inc. (''BX''), NASDAQ OMX Phlx, Inc. (''Phlx''), BSECC, and Stock Clearing Corporation of Philadelphia (''SCCP'') have each reviewed the proposed change and have determined that it should be filed with the Commission.[5] The changes to the Certificate are limited in scope, and under Delaware law, they do not require approval by the stockholders of NASDAQ OMX.

Specifically, NASDAQ OMX proposes to eliminate its Certificate of Designations, Preferences and Rights of Series D Preferred Stock, and all matters set forth therein. NASDAQ OMX's Series D Stock was created in 2005 for the purpose of allowing National Association of Securities Dealers, Inc. to retain voting control over NASDAQ OMX's predecessor, The Nasdaq Stock Market, Inc. In connection with the NASDAQ Exchange commencing operations as a national securities exchange, the sole share of Series D Stock was redeemed in December 2006. Under Delaware law, both a certificate of designations (designating a series of preferred stock) and a certificate of elimination (eliminating a previously adopted designation) are deemed to be amendments to NASDAQ OMX's Certificate.

2. Statutory Basis

SCCP believes that the proposed rule change is consistent with provisions of Section 17A of the Act,[6] in general, and with Section 17A(b)(3)(A) of the Act,[7] in particular, in that it is designed to ensure that SCCP is so organized and has the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions. The proposed change will enhance the clarity of NASDAQ OMX's governance documents by eliminating provisions relating to a series of preferred stock that is no longer outstanding.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

SCCP does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(3)[9] thereunder because the proposal is concerned solely with the administration of SCCP. At any time within sixty days of the filing of such 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–SCCP–2009–01 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–SCCP–2009–01. 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. The text of the proposed rule change is available at SCCP, the Commission's Public Reference Room, and *http://www.nasdaqtrader.com/Trader.aspx?id=SCCPApprovedRules.* 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–SCCP–2009–01 and should be submitted on or before April 1, 2009.

[4] The Commission has modified the text of the summaries prepared by SCCP.

[5] The NASDAQ Exchange, Phlx, BX, BSECC, and SCCP have each submitted this proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act, 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(A).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(3).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. E9–5211 Filed 3–10–09; 8:45 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration # 11683]**

### New Hampshire Disaster # NH–00012 Declaration of Economic Injury

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of New Hampshire dated: 03/05/2009.

*Incident:* Severe Ice Storm.

*Incident Period:* 12/11/2008.

*Effective Date:* 03/05/2009.

*Eidl Loan Application Deadline Date:* 12/05/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

*The following areas have been determined to be adversely affected by the disaster:*

*Primary Counties:* Grafton, Hillsborough, Merrimack, Rockingham, Strafford.

*Contiguous Counties:*

New Hampshire: Belknap, Carroll, Cheshire Coos, Sullivan.

Massachusetts: Essex, Middlesex, Worcester.

Maine: York.

Vermont: Caledonia, Essex, Orange, Windsor.

*The Interest Rate is:* 4.000.

The number assigned to this disaster for economic injury is 116830.

The States which received an EIDL Declaration # are New Hampshire, Massachusets, Maine, Vermont.

(Catalog of Federal Domestic Assistance Number 59002)

[10] 17 CFR 200.30–3(a)(12).

Dated: March 5, 2009.

**Darryl K. Hairston,**

*Acting Administrator.*

[FR Doc. E9–5158 Filed 3–10–09; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #11684 and #11685]**

### New York Disaster #NY–00071

**AGENCY:** Small Business Administration

**ACTION:** Notice.

**SUMMARY:** This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of New York (FEMA–1827–DR), dated 03/04/2009.

*Incident:* Severe Winter Storm.

*Incident Period:* 12/11/2008 through 12/31/2008.

*Effective Date:* 03/04/2009.

*Physical Loan Application Deadline Date:* 05/04/2009.

*Economic Injury (Eidl) Loan Application Deadline Date:* 12/04/2009.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the President's major disaster declaration on 03/04/2009, private non-profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:*

Albany, Columbia, Delaware, Greene, Rensselaer, Saratoga, Schenectady, Schoharie, Washington.

*The Interest Rates are:*

| | Percent |
|---|---|
| Other (Including Non-Profit Organizations) With Credit Available Elsewhere | 4.500 |
| Businesses And Non-Profit Organizations Without Credit Available Elsewhere | 4.000 |

The number assigned to this disaster for physical damage is 11684B and for economic injury is 11685B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E9–5159 Filed 3–10–09; 8:45 am]

**BILLING CODE 8025–01–P**

## DEPARTMENT OF STATE

**[Public Notice 6540]**

### U.S. National Commission for UNESCO Notice of Partially Closed Meeting

The U.S. National Commission for UNESCO will hold a meeting by conference call on Wednesday, March 25, 2009, beginning at 11 a.m. Eastern Time. The open portion of the call should last approximately fifteen minutes and will address the timing of the Commission's Annual Meeting and the 181st UNESCO Executive Board. Additional topic areas that relate to UNESCO may be discussed as needed. The Commission will accept brief oral comments from members of the public during the open portion of this conference call. The public comment period will be limited to approximately ten minutes in total with three minutes allowed per speaker. Members of the public who wish to present oral comments or listen to the conference call must make arrangements with the Executive Secretariat of the National Commission by March 23, 2009.

The second portion of the teleconference meeting will be closed to the public to allow the Commission to discuss applications for the U.S. National Commission for UNESCO Laura W. Bush Traveling Fellowship, a fellowship funded through privately donated funds. This call will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(6) because it is likely to involve discussion of information of a personal nature regarding the relative merits of individual applicants where disclosure would constitute a clearly unwarranted invasion of personal privacy.

For more information contact Kelly Siekman, Deputy Director of the Office of UNESCO Affairs, Washington, DC 20037. Telephone: (202) 663–0026; Fax: (202) 663–0035; e-mail: *DCUNESCO@state.gov*.

Dated: March 4, 2009.

**Emily Spencer,**

*Education Officer, IO/UNESCO, Department of State.*

[FR Doc. E9–5070 Filed 3–10–09; 8:45 am]

**BILLING CODE 4710–19–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Agency Information Collection: Activity for OMB Review: Advisory Committee Candidate Biographical Information Request Form

**AGENCY:** Office of the Secretary, DOT. *Docket:* DOT–OST–2009–0054.

**ACTION:** Notice and request for comment.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for an extension without change of currently approved Advisory Committee Candidate Biographical Information Request Form. A **Federal Register** Notice with a 60-day comment period was published on November 18, 2008 (FR Vol. 73, No. 223, page 68491–68491). The agency did not receive any comments to its previous notice.

**DATES:** Written comments should be submitted by April 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** Lisa L. Hough, Committee Management Officer, Executive Secretariat, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590 or telephone: (202) 366–4277.

*Comments:* Comments should be sent to OMB: Attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or *oira_submission@omb.eop.gov* and should identify the associated OMB Approval Number 2105–0009 and Docket DOT–OST–2009–0054.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval No.:* 2105–0009.

*Title:* Advisory Committee Candidate Biographical Information Request Form.

*Form No.:* DOT F1120.1.

*Type of Review:* Extension.

*Respondents:* Individuals who have contacted DOT to indicate interest in appointment to and advisory committee and individuals who have been recommended for membership on an advisory committee. Only one collection is expected per individual.

*Number of Respondents:* 100 Annually.

*Total Annual Burden:* 25 hours.

*Needs and Uses:* Information is gathered from individuals interested in appointment to an advisory committee and individuals who have been recommended for membership on an advisory committee to ensure fair and balanced membership.

Issued in Washington, DC, on March 5, 2009.

**Patricia Lawton,**

*Departmental PRA Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. E9–5162 Filed 3–10–09; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–290 (Sub-No. 300X)]**

### Norfolk Southern Railway Company—Abandonment Exemption—in Wise County, VA

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon a 1.81-mile line of railroad between milepost CV 277.30 (Big Stone Gap) and milepost CV 279.11 (Appalachia), in Wise County, VA.[1] The line traverses United States Postal Service Zip Codes 24216 and 24219.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic on the line, if any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 10, 2009, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 23, 2009.[4] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 31, 2009, with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Senior General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

NSR has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 16, 2009. Interested persons may obtain a copy of the EA by writing to SEA (Room 1100, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 245–0305. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If

[1] According to NSR, the proposed line for abandonment has been out of service since the late 1980s, when the owner, CSX Transportation, Inc., rerouted its traffic to NSR's line between Big Stone Gap and Frisco, TN.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,500. *See* 49 CFR 1002.2(f)(25).

[4] NSR states that it is not aware of any restriction on the title to the right-of-way that would affect the transfer of title or the use of property for other than rail purposes but will provide full title information promptly if it receives a proposal to acquire the property for public purposes.

consummation has not been effected by NSR's filing of a notice of consummation by March 11, 2010, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 27, 2009.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. E9–4878 Filed 3–10–09; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Ex Parte No. 558 (Sub-No. 12)]**

### Railroad Cost of Capital—2008

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Notice of decision instituting a proceeding to determine the railroads' 2008 cost of capital.

**SUMMARY:** The Board is instituting a proceeding to determine the railroad industry's cost of capital for 2008. The decision solicits comments on: (1) The railroads' 2008 current cost of debt capital; (2) the railroads' 2008 current cost of preferred stock equity capital (if any); (3) the railroads' 2008 cost of common stock equity capital; and (4) the 2008 capital structure mix of the railroad industry on a market value basis. Comments should focus on the various cost of capital components listed above using the same methodology followed in the *Cost 07* decision, with the exception of applying the Ex Parte No. 664 (Sub No. 1) decision in calculating the cost-of-equity.

**DATES:** Notices of intent to participate are due no later than March 20, 2009. Statements of the railroads are due by April 20, 2009. Statements of other interested persons are due by May 20, 2009. Rebuttal statements by the railroads are due by June 19, 2009.

**ADDRESSES:** Comments may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should submit a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at *http://www.stb.dot.gov.* Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, *Attn:* STB Ex Parte No. 558 (Sub No. 12), 395 E Street, SW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:** Pedro Ramirez (202) 245–0333. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** The Board's decision is posted on the Board's Web site, *http://www.stb.dot.gov.* In addition, copies of the decision may be purchased by contacting the office of Public Assistance, Governmental Affairs, and Compliance at (202)–245–0235. Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

**Authority:** 49 U.S.C. 10704(a).

Decided: March 5, 2009.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

**Kulunie L. Cannon,**

*Clearance Clerk.*

[FR Doc. E9–5138 Filed 3–10–09; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 34554 (Sub-No. 11)]**

### Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

**AGENCY:** Surface Transportation Board, DOT.

**ACTION:** Partial revocation of exemption.

**SUMMARY:** The Board, under 49 U.S.C. 10502, revokes the class exemption as it pertains to the modified trackage rights described in STB Finance Docket No. 34554 (Sub-No. 10) [1] to permit the trackage rights to expire on or about December 31, 2009, in accordance with the agreement of the parties,[2] subject to the employee protective conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

**DATES:** This exemption is effective on April 10, 2009. Petitions to stay must be filed by March 23, 2009. Petitions to reopen must be filed by March 31, 2009.

**ADDRESSES:** An original and 10 copies of all pleadings referring to STB Finance Docket No. 34554 (Sub-No. 11) must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Gabriel S. Meyer, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

**FOR FURTHER INFORMATION CONTACT:** Julia Farr (202) 245–0359. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Board's decision.

[1] On December 23, 2008, Union Pacific Railroad Company (UP) concurrently filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF Railway Company (BNSF) to extend the expiration date of the local trackage rights granted to UP over BNSF's line of railroad between BNSF milepost 579.3 near Mill Creek, OK, and BNSF milepost 631.1 near Joe Junction, TX, a distance of approximately 51 miles. UP submits that the trackage rights are only temporary rights, but, because they are ''local'' rather than ''overhead'' rights, they do not qualify for the Board's class exemption for temporary trackage rights under 49 CFR 1180.2(d)(8). *See Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company,* STB Finance Docket No. 34554 (Sub-No. 10) (STB served Jan. 8, 2009).

[2] The trackage rights were originally granted in *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 34554 (STB served Oct. 7, 2004). Subsequently, the parties filed notices of exemption several times based on their agreements to extend expiration dates of the same trackage rights. *See* STB Finance Docket No. 34554 (Sub-No. 2) (decision served February 11, 2005); STB Finance Docket No. 34554 (Sub-No. 4) (decision served March 3, 2006); STB Finance Docket No. 34554 (Sub-No. 6) (decision served January 12, 2007); and STB Finance Docket No. 34554 (Sub-No. 8) (decision served January 4, 2008). Because the original and subsequent trackage rights notices were filed under the class exemption at 49 CFR 1180.2(d)(7), under which trackage rights normally remain effective indefinitely, in each instance the Board granted partial revocation of the class exemption to permit the authorized trackage rights to expire. *See* STB Finance Docket No. 34554 (Sub-No. 1) (decision served November 24, 2004); STB Finance Docket No. 34554 (Sub-No. 3) (decision served March 25, 2005); STB Finance Docket No. 34554 (Sub-No. 5) (decision served March 23, 2006); STB Finance Docket No. 34554 (Sub-No. 7) (decision served March 13, 2007); and STB Finance Docket No. 34554 (Sub-No. 9) (decision served March 20, 2008). At the time of the extension authorized in STB Finance Docket No. 34554 (Sub-No. 8), the parties anticipated that the authority to allow the rights to expire would be exercised by December 31, 2008. However, the parties filed on December 23, 2008 in STB Finance Docket No. 34554 (Sub-No. 10) their most recent notice of exemption so that the trackage rights could be extended to December 31, 2009, and in STB Finance Docket No. 34554 (Sub-No. 11) their latest petition to partially revoke the class exemption to permit expiration, which we are addressing here.

*Board* decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Decided: March 5, 2009.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. E9–5141 Filed 3–10–09; 8:45 am]

**BILLING CODE 4915–01–P**

## DEPARTMENT OF THE TREASURY

### Order Granting Temporary Exemptions From Certain Provisions of the Government Securities Act and Treasury's Government Securities Act Regulations in Connection With a Request on Behalf of ICE US Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments

**AGENCY:** Department of the Treasury, Office of the Assistant Secretary for Financial Markets.

**ACTION:** Notice of temporary exemptions.

**SUMMARY:** The Department of the Treasury (Treasury) is granting temporary exemptions from certain provisions of the Government Securities Act of 1986 (GSA) and Treasury's GSA regulations in connection with a request on behalf of ICE US Trust LLC related to the central clearing of credit default swaps that reference government securities. These temporary exemptions are consistent with temporary exemptions the Securities and Exchange Commission recently granted to ICE US Trust LLC related to the central clearing of credit default swaps. Treasury is also soliciting public comment on this Order.

**DATES:** *Effective:* March 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Lori Santamorena, Executive Director; Lee Grandy, Associate Director; or Kevin Hawkins, Government Securities Specialist; Bureau of the Public Debt, Department of the Treasury, at 202–504–3632.

**SUPPLEMENTARY INFORMATION:** The following is Treasury's exemptive order:

### I. Introduction

Treasury and other financial regulators have raised concerns related to the over-the-counter (''OTC'') market in credit default swaps (''CDS''). These concerns relate to the potential systemic risk to the financial system posed by such CDS markets. The President's Working Group on Financial Markets (''PWG'') noted in November 2008 that its:

> Top near-term OTC derivatives priority is to oversee the successful implementation of central counterparty services for credit default swaps. A well-regulated and prudently managed CDS central counterparty can provide immediate benefits to the market by reducing the systemic risk associated with counterparty credit exposures. It also can help facilitate greater market transparency and be a catalyst for a more competitive trading environment that includes exchange trading of CDS.[1]

In this context, the Securities and Exchange Commission (''SEC'') recently issued to ICE US Trust LLC (''ICE Trust''), certain participants in ICE Trust, and others, exemptions from certain provisions of the Securities Exchange Act of 1934 (''Exchange Act'').[2] The SEC's exemptions did not cover the Exchange Act provisions applicable to government securities.

IntercontinentalExchange, Inc. (''ICE'') and The Clearing Corporation (''TCC'') requested that Treasury grant, pursuant to its authority under Section 15C of the Exchange Act, an exemption for ICE Trust, participants in ICE Trust and their affiliates,[3] and interdealer brokers (''IDBs'') from the provisions of Section 15C(a), (b), and (d) (other than subsection (d)(3)) and the Treasury rules thereunder applicable to government securities brokers and government securities dealers,[4] to the extent they ''would otherwise be applicable to the activities of any of the foregoing in connection with the offer, execution, termination, clearance, settlement, performance and related activities involving'' CDS entered into by participants in ICE Trust with other such participants and submitted to ICE Trust for clearance and settlement.[5]

Based on the facts presented and the representations made in the request on behalf of ICE Trust (''the request''),[6] and for legal certainty and other reasons discussed in this Order, the Secretary of the Treasury (''Secretary'') is granting two temporary exemptions. First, the Secretary is granting a temporary exemption to ICE Trust, certain participants in ICE Trust (''ICE Trust Participants''),[7] and certain eligible contract participants (''ECPs''),[8] as defined in the Commodity Exchange Act (''CEA''), from the registration requirements under Section 15C and certain regulations applicable to registered or noticed government securities brokers or government securities dealers.[9] The temporary exemption applies to these entities' transactions in ''Cleared CDS'' as defined in this Order,[10] which generally are CDS submitted to ICE Trust where the CDS reference a government security. In general, this exemption does not apply to any ICE Trust Participant that is registered or noticed as a government securities broker or a government securities dealer pursuant

[1] *See* ''PWG Announces Initiatives to Strengthen OTC Derivatives Oversight and Infrastructure.'' U.S. Department of the Treasury press release issued November 14, 2008. Available at: *http://www.treasury.gov/press/releases/hp1272.htm.* The Secretary of the Treasury serves as chairman of the group, which includes the chairmen of the Federal Reserve Board, the Securities and Exchange Commission, and the Commodity Futures Trading Commission, and which worked with the Office of the Comptroller of the Currency and the Federal Reserve Bank of New York on these initiatives.

[2] Securities Exchange Act Release No. 34–59527 (March 6, 2009). Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection with Request on Behalf of ICE US Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments. *See http://www.sec.gov.* The SEC's order relates only to and is necessary only for CDS that are not swap agreements under Section 206A of the Gramm-Leach-Bliley Act.

[3] The ICE Trust request defines *affiliate* to mean an entity that directly, or indirectly through one or more intermediaries, controls or is controlled by, or under common control with, an ICE Trust Participant.

[4] 17 CFR Chapter IV parts 400–405, and 449 were issued under Section 15C(a), (b), and (d). *See* Part II Section 15C of this Order, *infra.*

[5] *See* Letter from Johnathan Short, IntercontinentalExchange Inc. and Kevin McClear, The Clearing Corporation, to the Commissioner of the Public Debt, Van Zeck, February 26, 2009, available at *http://www.treasurydirect.gov/instit/statreg/gsareg/gsareg.htm.*

[6] The temporary exemptions contained in this Order are based on the facts and circumstances presented in the request. These temporary exemptions could become unavailable if the facts or circumstances change such that the representations in the request are no longer materially accurate. The status of Cleared CDS submitted to ICE Trust prior to such change would be unaffected.

[7] For purposes of this Order, *ICE Trust Participant* means any participant in ICE Trust that submits CDS that reference a government security to ICE Trust for clearance and settlement exclusively (i) for its own account or (ii) for the account of an affiliate that controls, is controlled by, or is under common control with the participant in ICE Trust.

[8] ECPs are defined in Section 1a(12) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 1 *et seq.* The use of the term ECPs in this Order refers to the definition of ECPs as in effect on the date of this Order, and excludes persons that are ECPs under Section 1a(12)(C). Treasury's exemption provided in this Order to ECPs includes IDBs that are ECPs.

[9] As used in this Order, *registered or noticed government securities brokers or government securities dealers* encompass all brokers, dealers, and entities required to register or file notice pursuant to Section 15C(a)(1) of the Exchange Act. *See* note 18, *infra.*

[10] For purposes of this Order, *Cleared CDS* means a credit default swap that is submitted (or offered, purchased, or sold on terms providing for submission) to ICE Trust, that is offered only to, purchased only by, and sold only to ECPs (as defined in Section 1a(12) of the CEA as in effect on the date of this Order (other than a person that is an ECP under paragraph (C) of that section)), and that references a government security.

to Section 15C(a)(1) of the Exchange Act.

Second, with respect to registered or noticed government securities brokers and government securities dealers that are not financial institutions,[11] the Secretary is granting a temporary exemption from certain Treasury regulatory requirements consistent with the SEC's treatment of registered brokers and dealers in its exemptive order. This temporary exemption similarly applies to these entities' transactions in Cleared CDS.

## II. Section 15C

Title I of the Government Securities Act of 1986 [12] (''GSA'') amended the Exchange Act by adding Section 15C, authorizing the Secretary to promulgate regulations with respect to transactions in government securities [13] effected by government securities brokers [14] and government securities dealers [15] concerning financial responsibility, protection of customer securities and balances, and recordkeeping and reporting.

Under Title I of the GSA, all government securities brokers and government securities dealers are required to comply with the requirements in Treasury's GSA regulations that are set out at 17 CFR parts 400–449.[16] Treasury's GSA regulations, for the most part, incorporate with some modifications SEC rules for non-financial institution government securities brokers and government securities dealers and the appropriate regulatory agency [17] rules for financial institutions that are required to file notice as government securities brokers and government securities dealers.[18]

Section 15C(a)(5) of the Exchange Act provides that the Secretary:

> By rule or order, upon the Secretary's own motion or upon application, may conditionally or unconditionally exempt any government securities broker or government securities dealer, or class of government securities brokers or government securities dealers, from any provision of subsection (a), (b), or (d) of this section, other than subsection (d)(3), or the rules thereunder, if the Secretary finds that such exemption is consistent with the public interest, the protection of investors, and the purposes of [the Exchange Act].

As noted above, the SEC recently issued an order granting temporary, conditional exemptions under the Exchange Act to ICE Trust in connection with the clearing and settling of certain CDS, as well as to certain other persons for proposed related activities.[19] The SEC noted in its order that the temporary exemptions extended neither to the Exchange Act provisions applicable to government securities as set forth in Section 15C and its underlying rules and regulations, nor to the related definitions of ''government securities,'' ''government securities broker,'' and ''government securities dealer.'' The SEC further noted that it does not have authority under Section 36 of the Exchange Act to issue exemptions in connection with these provisions.[20]

The request on behalf of ICE Trust states that some CDS include reference obligations or deliverable obligations that may be government securities as defined in Section 3(a)(42) of the Exchange Act.[21] In providing temporary exemptions from certain provisions of Section 15C of the Exchange Act, Treasury is not making a determination, for purposes of this Order, whether particular CDS are ''government securities.''

## III. CDS

A CDS is a bilateral contract between two parties, known as counterparties. The value of this contract is based on underlying obligations of a single entity or on a particular security or other debt obligation, or an index of several such entities, securities, or obligations. The obligation of a seller under a CDS contract to make payments is triggered by a default or other credit event involving such entity or entities or such security or securities. Investors may purchase CDS for a variety of reasons, including to offset or insure against risk in their portfolios, to take synthetic positions in bonds or in segments of the debt market, or to capitalize on credit spreads. In recent years, CDS market volumes have rapidly increased and this growth has coincided with a significant rise in the types and number of entities participating in the CDS market.

Under a typical CDS contract, the seller of the contract agrees, in exchange for receiving fixed periodic payments from the purchaser, to assume the credit risk of the underlying obligation(s) and to compensate the purchaser in the event of a default, bankruptcy, or other credit event. A bilateral CDS contract therefore entails counterparty risk between the purchaser and the seller. Currently, CDS participants bilaterally manage counterparty risk by monitoring their counterparties, entering into legal agreements that permit them to net

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[11] A *financial institution* is defined in 15 U.S.C. 78c(a)(46).

[12] Public Law 99–571, 100 Stat. 3208 (1986).

[13] The term *government securities,* as defined at 15 U.S.C. 78c(a)(42), means: (A) Securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States; (B) securities which are issued or guaranteed by the Tennessee Valley Authority or by corporations in which the United States has a direct or indirect interest and which are designated by the Secretary of the Treasury for exemption as necessary or appropriate in the public interest or for the protection of investors; (C) securities issued or guaranteed as to principal or interest by any corporation the securities of which are designated, by statute specifically naming such corporation, to constitute exempt securities within the meaning of the laws administered by the SEC; and (D) generally ''any put, call, straddle, option, or privilege'' on a government security other than one that is traded on a national securities exchange or for which quotations are disseminated through an automated quotation system operated by a registered securities association. Certain Canadian government obligations are also included for certain purposes.

[14] A *government securities broker* generally is ''any person regularly engaged in the business of effecting transactions in government securities for the account of others'' with certain exclusions. 15 U.S.C. 78c(a)(43).

[15] A *government securities dealer* generally is ''any person engaged in the business of buying and selling government securities for his own account, through a broker or otherwise,'' with certain exclusions. 15 U.S.C. 78c(a)(44).

[16] 17 CFR part 400 Rules of general application; 17 CFR part 401 Exemptions; 17 CFR part 402 Financial responsibility; 17 CFR part 403 Protection of customer securities and balances; 17 CFR part 404 Recordkeeping and preservation of records; 17 CFR part 405 Reports and audit; 17 CFR part 420 Large position reporting; and 17 CFR part 449 Forms, Section 15C of the Securities Exchange Act of 1934. The GSA regulations also include requirements for custodial holdings by depository institutions at 17 CFR part 450, which were issued under Title II of the GSA.

[17] The definition of *appropriate regulatory agency* with respect to a government securities broker or a government securities dealer is set out at 15 U.S.C. 78c(a)(34)(G). The definition includes the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Director of Thrift Supervision, and in limited circumstances the SEC.

[18] The GSA regulations apply to all classes of government securities brokers and government securities dealers required to register or file notice pursuant to Section 15C(a)(1) of the Exchange Act. This encompasses registered brokers and dealers (including OTC derivatives dealers), registered government securities brokers and registered government securities dealers (those specialized government securities brokers and government securities dealers that conduct a business in only government or other exempted securities (other than municipal securities)), and financial institutions that are required to file notice as government securities brokers and government securities dealers. *See* 17 CFR 400.1 and definitions at 17 CFR 400.3. The GSA regulations also address futures commission merchants that are government securities brokers or government securities dealers, but these entities are not covered in this Order. (The definitions of ''government securities broker'' and ''government securities dealer'' in 15 U.S.C. 78c(a)(43) and 78c(a)(44) exclude certain persons registered with the Commodity Futures Trading Commission (''CFTC''), but only if such persons effect transactions in government securities that the SEC, in consultation with the CFTC, has determined to be incidental to such persons' futures-related business.)

[19] *See* note 2, *supra.* The SEC's exemptive order applies only to CDS that are not swap agreements and thus not excluded from the definition of ''security'' by Section 3A of the Exchange Act.

[20] 15 U.S.C. 78mm(b).

[21] *See* note 13, *supra.*

gains and losses across contracts, and requiring counterparty exposures to be collateralized. A central counterparty (''CCP'') could allow participants to avoid risks specific to an individual counterparty because a CCP ''novates'' bilateral trades by entering into separate contractual arrangements with each counterparty—becoming buyer to each seller and seller to each buyer.[22] Novation is one of the means by which a CCP can assume counterparty risk.

For this reason, a CCP for CDS could contribute generally to the goal of mitigating potential systemic risk. As part of its risk management program, a CCP could subject novated contracts to initial and variation margin requirements and establish clearing and guarantee funds. The CCP also could implement a loss-sharing arrangement among its participants to respond to a potential participant insolvency or default.

Recent credit market events have demonstrated the need for mechanisms to help manage potential counterparty risks posed by CDS. A prudently-managed CCP could help promote efficiency and reduce the potential systemic risk associated with counterparty credit exposures. These benefits could be particularly significant in times of market stress, as CCPs could enhance transparency and mitigate the potential for a market participant's difficulties to destabilize other market participants.

## IV. ICE Trust

As noted above, ICE and TCC, on behalf of ICE Trust, have requested that the Secretary grant exemptions from certain requirements under the Exchange Act with respect to the proposed activities of ICE Trust in clearing and settling certain CDS, as well as the proposed activities of certain other persons.[23]

Based on the request, we understand the facts to be as follows. ICE and TCC are each corporations organized under the laws of the State of Delaware. The request states that ICE is in the process of acquiring TCC. ICE Trust is organized as a New York State chartered limited liability trust company, and will become a member of the Federal Reserve System.[24] ICE Trust is subject to direct supervision and examination by the New York State Banking Department, and due to its expected membership in the Federal Reserve System, will be subject to direct supervision and examination by the Board of Governors of the Federal Reserve System, specifically by the Federal Reserve Bank of New York.

We further understand that CDS transactions entered into by ICE Trust Participants with other ICE Trust Participants will be submitted to ICE Trust for clearance and settlement. The request represents that initially, ICE Trust's business will be limited to the provision of clearing services for a limited range of CDS in the OTC market. During this initial phase, ICE Trust's CDS clearing services will be limited to transactions for the proprietary accounts of ICE Trust Participants (in each case, acting as principal for its own account or the account of an affiliate). ICE Trust will act as a CCP for ICE Trust Participants by assuming, through novation, the obligations of all eligible CDS transactions accepted by it for clearing and by collecting margin and other credit support from ICE Trust Participants to collateralize their obligations to ICE Trust.

The request states that ICE Trust anticipates that it will eventually expand the range of CDS contracts eligible for clearing to include single name CDS (which could include issuers of government securities). The request explains that participation in ICE Trust will be open to all qualified applicants, each of whom will clear transactions solely as principal for its own account and not on behalf of other persons. In order to qualify as an ICE Trust Participant, an applicant will be required to satisfy ICE Trust's participant criteria at the time that the applicant applies to ICE Trust and on an ongoing basis thereafter.[25] Among these criteria is a requirement that each ICE Trust Participant is subject to regulation for capital adequacy by a federal or foreign financial regulator or is an affiliate of an entity that is subject to regulation by such a financial regulator (and as a result the ICE Trust Participant would be subject to consolidated holding company group supervision).

Although CDS are currently bilaterally negotiated and executed, major market participants frequently use the Deriv/SERV service of The Depository Trust & Clearing Corporation comparison and confirmation service when documenting their CDS transactions. ICE Trust will leverage the Deriv/SERV infrastructure in operating its CDS clearing service.

ICE Trust will collect and process information about CDS transactions and positions from all of its participants. With this information, ICE Trust plans to, among other things, calculate and disseminate current values for open positions for the purpose of setting appropriate margin levels, or have an agent perform these functions on its behalf. ICE Trust believes that the availability of such information could improve the fairness, efficiency, and competitiveness of the market. Moreover, with pricing and valuation information relating to CDS transactions, ICE Trust represents that market participants would be able to derive information about underlying securities and indexes. ICE Trust believes this could improve the efficiency and effectiveness of the securities markets by allowing investors to better understand credit conditions generally.

ICE Trust maintains that in addition to reducing the outstanding notional amount of ICE Trust-cleared CDS, it will further mitigate counterparty risk to ICE Trust, ICE Trust Participants, and the CDS market generally through its margin, guaranty fund, and credit support framework.

As the counterparty to each of the ICE Trust Participants, ICE Trust will have exposure to default risk by ICE Trust Participants. To address this counterparty credit risk, ICE Trust states that it will require the ICE Trust Participants to provide credit support for their obligations under cleared CDS transactions and has established rules that ''mutualize'' the risk of an ICE Trust Participant default across all ICE Trust Participants. ICE Trust's risk management infrastructure and related risk metrics have been structured specifically for the CDS products that ICE Trust clears. Each ICE Trust Participant's credit support obligations will be governed by a uniform credit support framework and applicable ICE Trust Rules.

The request also states that ICE Trust Participants may use the facilities of an IDB to execute CDS, for example, to access liquidity more rapidly or to maintain pre-execution anonymity, and submit such transactions for clearance and settlement to ICE Trust. Further, these IDBs may be unregistered with the SEC, may be registered as broker-dealers or government securities brokers or government securities dealers, or may be registered as broker-dealers and

[22] *Novation* generally is a process through which the original obligation between a buyer and seller is discharged through the substitution of the CCP as seller to buyer and buyer to seller, creating two new contracts.

[23] *See* note 5, *supra*.

[24] The Federal Reserve Board announced on March 4, 2009, its approval of the application by ICE US Trust LLC to become a member of the Federal Reserve System. *See* Federal Reserve Board press release, available at *http://www.federalreserve.gov/newsevents/press/orders/20090304a.htm*.

[25] The request states that the participant criteria are specified in the ICE Trust Rules.

operating subject to Regulation ATS. The request indicates that these IDBs, although they are compensated for matching and effecting CDS transactions, do not handle the funds or property of their CDS participants, and similarly do not assume market positions in connection with their intermediation of CDS transactions.

The request states that a CDS that does not qualify as a security-based swap agreement may potentially be subject to characterization as a security, and similarly, that a CDS that has one or more reference or deliverable obligations that are government securities and that does not qualify as a security-based swap agreement may potentially be subject to characterization as a government security.

The request also asserts that the framework for the regulation of securities broker-dealers has been effective for traditional securities activities, but it has not provided a commercially practical framework for the conduct of broad categories of OTC derivatives activities. The request states that little would be gained by subjecting ICE Trust Participants to regulation as government securities brokers or government securities dealers with respect to any cleared CDS that reference government securities, given that ICE Trust Participants will be sophisticated derivatives market participants, will be acting solely for their own accounts (or the account of their affiliates) and will be limited to firms who are subject to regulation or consolidated supervision by a financial regulator.

ICE Trust further states that requiring government securities broker and government securities dealer regulation and imposing the Exchange Act Section 15C government securities regime on any cleared CDS that reference government securities would create a significant and burdensome dislocation of this part of the CDS market and would present a significant obstacle to the adoption of clearing for this and related segments of the CDS market. The request states that the imposition of such additional regulation and regulatory constraints would be unwarranted, would not constitute an efficient allocation of regulatory resources, and would not serve the public interest. ICE Trust believes that, equally important, ''given the size and significance of the CDS market, proceeding in the face of any material legal uncertainty as to the regulatory status of a significant portion of CDS cleared through ICE Trust would be unacceptable both to market participants and the official sector.'' The request states that either outcome would produce undesirable consequences and jeopardize the important benefits that the introduction of central clearing for CDS can provide.

The request asks for exemptive relief for the avoidance of legal uncertainty, on terms and conditions that would, in effect, permit ICE Trust, ICE Trust Participants and their affiliates, and IDBs to continue to conduct business in cleared CDS that reference government securities on the basis that such transactions would be treated as security-based swap agreements under the Exchange Act.[26]

## V. Temporary Exemption for ICE Trust, ICE Trust Participants and Certain ECPs

Treasury believes that the application of the GSA requirements to certain participants in CDS transactions that are not currently registered or noticed government securities brokers or government securities dealers could deter some market participants from using ICE Trust to clear CDS transactions where the CDS references a government security and thus reduce the CCP benefit of mitigating potential systemic risk. Moreover, based on the representations made in the request for exemptive relief, Treasury has concluded that the CCP facility for CDS proposed by ICE Trust could increase transparency, enhance counterparty risk management, and contribute generally to the goal of mitigating systemic risk.

Accordingly, pursuant to Section 15C(a)(5) of the Exchange Act, the Secretary finds that it is consistent with the public interest, the protection of investors, and the purposes of the Exchange Act to grant a temporary exemption until December 6, 2009 from the provisions of Section 15C(a), (b), and (d) (other than subsection (d)(3)) of the Exchange Act, and the rules thereunder. This temporary exemption applies to: (1) ICE Trust, (2) ICE Trust Participants that are not government securities brokers or government securities dealers registered or noticed under Section 15C(a)(1) of the Exchange Act, and (3) any ECPs[27] other than: (a) ECPs that are registered or noticed government securities brokers or government securities dealers; (b) ECPs that receive or hold funds or securities for the purpose of purchasing, selling,[28] clearing, settling, or holding CDS positions for other persons; and (c) ECPs that are ECPs under Section 1a(12)(C) of the CEA. This temporary exemption applies to these entities' transactions in Cleared CDS.[29]

## VI. Temporary Exemption for Registered or Noticed Government Securities Brokers and Government Securities Dealers That Are Not Financial Institutions

The GSA and its underlying rules and regulations require government securities brokers and government securities dealers to comply with a number of obligations that are important to protecting investors and promoting market integrity. Treasury believes it is important to promote the integrity, liquidity, and efficiency of financial markets while at the same time ensuring that risk is mitigated and customers are protected. Treasury also wants to avoid creating obstacles to the use of CCPs for CDS, and recognizes that the factors discussed above suggest that the full range of GSA requirements generally should not be applied immediately to government securities brokers and government securities dealers that engage in transactions involving CDS that reference a government security.

The request suggested that to the extent that the SEC's CDS exemptions exclude particular Exchange Act provisions or specify certain conditions to the exemptive relief, the Treasury relief should be issued subject to the same conditions and to compliance with the same excluded provisions, to the

[26] The approach of the SEC exemptive order was to apply substantially the same framework to CDS transactions that applies to transactions in security-based swap agreements. *See* note 2, *supra*. While Section 3A of the Exchange Act excludes ''swap agreements'' from the definition of ''security,'' certain antifraud and insider trading provisions under the Exchange Act explicitly apply to security-based swap agreements. *Security-based swap agreement* is defined in Section 206B of the Gramm-Leach-Bliley Act as a swap agreement in which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

[27] Treasury is providing relief to ECPs, including IDBs that are ECPs, consistent with the SEC's order and the treatment of security-based swap agreements under the Exchange Act. A *swap agreement* is defined under Section 206A of the Gramm-Leach-Bliley Act, in part, as any agreement, contract, or transaction between eligible contract participants (as defined in Section 1a(12) of the Commodity Exchange Act * * * other than a person that is an eligible contract participant under Section 1a(12)(C) of the Commodity Exchange Act * * *) * * * the material terms of which (other than price and quantity) are subject to individual negotiation. 15 U.S.C. 78c note.

[28] For the purposes of this Order, the terms *purchasing* and *selling* mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing the rights or obligations under, a cleared CDS transaction, as the context may require. This is consistent with the meaning of the terms ''purchase'' or ''sale'' under the Exchange Act in the context of security-based swap agreements. *See* Exchange Act Section 3A(b)(4).

[29] *See* note 10, *supra*.

extent applicable. The SEC order exempts registered broker-dealers from certain provisions and rules under the Exchange Act, but retains certain other requirements such as those related to the protection of customer funds and securities.[30]

Government securities brokers and government securities dealers are subject to the requirements in Section 15C and the regulations issued thereunder. Treasury was given authority by Congress in 1986 to issue rules with respect to transactions in government securities effected by government securities brokers and government securities dealers in the areas of financial responsibility, acceptance of custody and use of customer's securities, the carrying and use of customers' deposits or credit balances, and the transfer and control of government securities subject to repurchase agreements, records, and reporting. The GSA regulations issued by Treasury reflect a deliberate and responsive approach to regulating the government securities market, and strike a balance between ensuring customer protection and the continued liquidity and efficiency of the market. In addition, Congress directed the Secretary to: (1) Use existing regulations whenever possible, thereby avoiding duplicative requirements; (2) avoid imposing overly burdensome rules; and (3) ensure that the rules did not result in unequal treatment of market participants.[31]

Many of the Treasury regulations promulgated under the GSA incorporated with limited modifications the existing SEC regulations (*i.e.*, customer protection, recordkeeping, reports, and audits) that applied to registered brokers and dealers before the passage of the GSA. Treasury generally has exercised its authority under the Exchange Act in a manner that would provide consistency, to the extent possible, between the requirements applicable to registered broker-dealers and government securities brokers and government securities dealers. Therefore, Treasury is providing certain temporary exemptions for government securities brokers and government securities dealers that are not financial institutions from certain GSA regulations to maintain consistency with the requirements applicable to registered broker-dealers with respect to CDS transactions that are submitted to ICE Trust for clearance and settlement.

Accordingly, pursuant to Section 15C(a)(5) of the Exchange Act, the Secretary finds that it is consistent with the public interest, the protection of investors, and the purposes of the Exchange Act to grant a temporary exemption to registered or noticed government securities brokers and government securities dealers that are not financial institutions until December 6, 2009 from the regulations in 17 CFR parts 402, 403, 404, and 405.[32] However, this Order does not exempt registered or noticed government securities brokers or government securities dealers from the following: (1) The capital requirements for registered government securities brokers and government securities dealers in part 402 of the GSA regulations (which are comparable to SEC Rule 15c3–1 on net capital) [33]; (2) the provisions of part 403 of the GSA regulations that incorporate and modify SEC Rule 15c3–3 on reserves and custody of securities; (3) the provisions of parts 404 and 405 of the GSA regulations that incorporate and modify SEC Rules 17a–3 through 17a–5, 17h–1T and 17h–2T, on records and reports; and (4) the provisions of part 404 of the GSA regulations that incorporate and modify SEC Rule 17a–13 on quarterly security counts. This temporary exemption applies to these entities' transactions in Cleared CDS.[34]

With respect to noticed government securities brokers and government securities dealers that are financial institutions, the GSA regulations generally adopt the appropriate regulatory agency rules for financial institutions that are comparable to the SEC rules to which the exemption does not extend. The GSA regulations also incorporate rules of the appropriate regulatory agencies that are otherwise applicable to financial institutions. Treasury is not extending the temporary exemption to financial institution government securities brokers and government securities dealers. Financial institution government securities brokers and government securities dealers should continue to comply with existing rules.

In issuing this Order, Treasury has consulted with and considered the views of the staffs of the SEC, the Commodity Futures Trading Commission, and the financial institution appropriate regulatory agencies.

## VII. Solicitation of Comments

Treasury intends to monitor the development of CCPs for the CDS market and determine to what extent, if any, additional action might be necessary. For example, as circumstances warrant, certain conditions could be added, altered, or eliminated from this Order. Treasury will in the future consider whether the temporary exemptions should be extended or allowed to expire. Treasury believes it is prudent to solicit public comment on this Order. Specifically, Treasury is soliciting public comment on all aspects of these temporary exemptions, including:

1. The appropriateness of the length of this temporary exemption (until December 6, 2009). If not appropriate, what should the appropriate duration be?

2. The appropriateness of the extent of the relief granted or any exclusions from the exemptions.

You may send comments to: Government Securities Regulations Staff, Bureau of the Public Debt, 799 9th Street, NW., Washington, DC 20239–0001. You may also send comments by e-mail to *govsecreg@bpd.treas.gov*. Please provide your full name and mailing address. You may download this temporary exemptive Order, and review the comments we receive, from the Bureau of the Public Debt's Web site at *http://www.treasurydirect.gov*. The Order and comments also will be available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

Treasury will continue to consult with, the staffs of the SEC, the Commodity Futures Trading Commission, and the financial institution appropriate regulatory agencies on this matter.

## VIII. Conclusion

*It is hereby ordered,* pursuant to Section 15C(a)(5) of the Exchange Act, that, until December 6, 2009:

*(a) Temporary Exemption for ICE Trust, ICE Trust Participants, and Certain ECPs*

The following persons are exempt from the provisions of Section 15C(a), (b), and (d) (other than subsection (d)(3)) of the Exchange Act, and the rules thereunder: ICE Trust, ICE Trust Participants that are not government

[30] *See* note 2, *supra*.

[31] 15 U.S.C. 78o–5(b)(4) and (5).

[32] The rules in part 400 are excluded because they are rules of general application. The rules in part 401 are excluded because they cover existing exemptions. The rules in part 449 are excluded because they describe forms that are required by other rules.

[33] Part 402 does not apply to registered broker-dealers that are subject to Rule 15c3–1.

[34] *See* note 10, *supra*.

securities brokers or government securities dealers registered or noticed under Section 15C(a)(1) of the Exchange Act, and any ECPs [35] other than: (a) ECPs that are registered or noticed government securities brokers or government securities dealers; (b) ECPs that receive or hold funds or securities for the purpose of purchasing, selling, clearing, settling, or holding CDS positions for other persons; and (c) ECPs that are ECPs under Section 1a(12)(C) of the CEA. This temporary exemption applies to these entities' transactions in Cleared CDS.[36]

*(b) Temporary Exemption for Registered or Noticed Government Securities Brokers and Government Securities Dealers that are not Financial Institutions*

Registered or noticed government securities brokers and government securities dealers that are not financial institutions are exempt from the regulations in 17 CFR parts 402, 403, 404, and 405. However, this Order does not exempt registered or noticed government securities brokers or government securities dealers that are not financial institutions from the following:

(1) The capital requirements for registered government securities brokers and government securities dealers in part 402 of the GSA regulations (which are comparable to SEC Rule 15c3–1 on net capital);

(2) the provisions of part 403 of the GSA regulations that incorporate and modify SEC Rule 15c3–3 on reserves and custody of securities;

(3) the provisions of parts 404 and 405 of the GSA regulations that incorporate and modify SEC Rules 17a–3 through 17a–5, 17h–1T and 17h–2T, on records and reports; and

(4) the provisions of part 404 of the GSA regulations that incorporate and modify SEC Rule 17a–13 on quarterly security counts.

This temporary exemption applies to these entities' transactions in Cleared CDS.

The temporary exemptions contained in this Order are based on the facts and circumstances presented in the request. These temporary exemptions could become unavailable if the facts or circumstances change such that the representations in the request are no longer materially accurate. The status of Cleared CDS submitted to ICE Trust prior to such change would be unaffected.

**Karthik Ramanathan,**

*Acting Assistant Secretary for Financial Markets.*

[FR Doc. E9–5242 Filed 3–6–09; 4:15 pm]

**BILLING CODE 4810–39–P**

[35] *See* note 8, *supra.*

[36] *See* note 10, *supra.*

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network

### Agency Information Collection Activities; Proposed Collection; Comment Request; Report of International Transportation of Currency or Monetary Instruments

**AGENCY:** Financial Crimes Enforcement Network, Treasury.

**ACTION:** Notice and request for comments regarding the renewal without change of the Report of International Transportation of Currency or Monetary Instruments.

**SUMMARY:** As part of our continuing effort to reduce paperwork and respondent burden, the Financial Crimes Enforcement Network invites the general public and other Federal agencies to comment on an information collection requirement concerning the Report of International Transportation of Currency or Monetary Instruments (the ''CMIR''). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments should be received on or before May 11, 2009 to be assured of consideration.

**ADDRESSES:** Direct all written comments to: Regulatory Policy and Programs Division, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183–0039, *Attention:* PRA Comments—Report of International Transportation of Currency or Monetary Instruments. Comments also may be submitted by electronic mail to the following Internet address: *''regcomments@fincen.gov''* with the caption in the body of the text, ''*Attention:* PRA Comments—Report of International Transportation of Currency or Monetary Instruments.''

**FOR FURTHER INFORMATION CONTACT:** The FinCEN Regulatory Helpline at 800–949–2732, select option 6. A copy of the form may also be obtained from the FinCEN Web site at *http://www.fincen.gov/forms/files/fin105_cmir.pdf.*

**SUPPLEMENTARY INFORMATION:** *Title:* Report of International Transportation of Currency or Monetary Instruments.

*OMB Number:* 1506–0014.

*Form Number:* FinCEN Form 105.

*Abstract:* The Bank Secrecy Act (BSA), Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5332, authorizes the Secretary of the Treasury *inter alia* to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism or to implement counter-money laundering programs and compliance procedures. Regulations implementing Title II of the BSA appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of Financial Crimes Enforcement Network.

Pursuant to the BSA, ''a person or an agent or bailee of the person shall file a report * * * when the person, agent, or bailee knowingly—(1) Transports, is about to transport, or has transported, monetary instruments of more than $10,000 at one time—(A) From a place in the United States to or through a place outside the United States; or (B) to a place in the United States from or through a place outside the United States; or (2) receives monetary instruments of more than $10,000 at one time transported into the United States from or through a place outside the United States.'' 31 U.S.C. 5316(a). The requirement of 31 U.S.C. 5316(a) has been implemented through regulations promulgated at 31 CFR 103.23 and through the instructions to the CMIR.

Information collected on the CMIR is made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel in the official performance of their duties. The information collected is of use in investigations involving international and domestic money laundering, tax evasion, fraud, and other financial crimes.

*Current Actions:* Renewal without change.

*Type of Review:* Renewal of a currently approved collection.

*Affected Public:* Individuals, business or other for-profit institutions, and not-for-profit institutions.

*Estimated Number of Respondents:* 280,000.

*Estimated Time per Respondent:* 11 minutes.

*Estimated Total Annual Burden Hours:* 51,333 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the BSA must be retained for five years. Generally, information collected pursuant to the BSA is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. *Comments are invited on:* (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 4, 2009.

**James H. Freis, Jr.,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. E9–5128 Filed 3–10–09; 8:45 am]

**BILLING CODE 4810–02–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

**[AC–29: OTS No. 06571]**

### Canisteo Savings and Loan Association, Canisteo, NY; Approval of Conversion Application

Notice is hereby given that on January 29, 2009, the Office of Thrift Supervision approved the application of Canisteo Savings and Loan Association, Canisteo, New York, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: (202) 906-5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 U Street, NW., Washington, DC 20552, and the OTS Northeast Regional Office, Harborside Financial Center Plaza Five, Suite 1600, Jersey City, New Jersey 07311.

Dated: March 4, 2009.

By the Office of Thrift Supervision.

**Sandra E. Evans,**

*Federal Register Liaison.*

[FR Doc. E9–5106 Filed 3–10–09; 8:45 am]

**BILLING CODE 6720–01–M**

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on the Readjustment of Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on the Readjustment of Veterans will be held on March 26–27, 2009, at the American Legion, Washington Office, 1608 K Street, NW., Washington, DC.

The purpose of the Committee is to review the post-war readjustment needs of Veterans and to evaluate the availability and effectiveness of VA programs to meet these needs.

On March 26, the Committee will meet in an open session from 8 a.m. until noon. The agenda will feature a review of the service needs of combat Veterans with Traumatic Brain Injury and VA's rehabilitation programs established to meet the needs of severely wounded Veterans and family members. The Committee will also receive a briefing on the current initiatives of the Readjustment Counseling Service Vet Center program to ensure timely access and the availability of quality readjustment services to assist the Veterans returning from Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF). The Committee will discuss deployment-related problems faced by service members and their families following redeployment of the service member. In the afternoon, the Committee will reconvene from 1:30 p.m. to 5 p.m. in a closed session in order to protect patient privacy as the Committee tours patient treatment areas at the Alexandria, Virginia Vet Center and discusses service needs with Veterans and family members. Closing this portion of the meeting is in accordance with 5 U.S.C. 552b(c)(6).

On March 27, the Committee will meet in open session from 8 a.m. until 4:30 p.m. and will receive a briefing on the research findings reported by the Walter Reed Army Institute for Research on the social and psychological problems of combat Veterans returning from OEF and OIF. The Committee will also finalize drafting recommendations for the Committee's next annual report.

Time will not be allocated at this meeting for receiving oral presentations from the public. However, members of the public may direct written questions or submit prepared statements for review by the Committee in advance to Mr. Charles M. Flora, M.S.W., Designated Federal Officer, Readjustment Counseling Service, Department of Veterans Affairs (15), 810 Vermont Avenue, NW., Washington, DC 20420. Those who plan to attend or have questions concerning the meeting may contact Mr. Flora at (202) 461-6525 or *charles.flora@va.gov.*

Dated: March 6, 2009.

By Direction of the Secretary:

**E. Philip Riggin,**

*Committee Management Officer.*

[FR Doc. E9–5281 Filed 3–10–09; 8:45 am]

**BILLING CODE 8320–01–P**

Federal Register

Wednesday,
March 11, 2009

## Part II

# Department of Education

**Readiness and Emergency Management for Schools; Notice**

## DEPARTMENT OF EDUCATION

### Readiness and Emergency Management for Schools

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.184E.

**AGENCY:** Office of Safe and Drug-Free Schools, Department of Education.

**ACTION:** Notice of final priorities and requirements.

**SUMMARY:** The Acting Assistant Deputy Secretary for Safe and Drug-Free Schools announces priorities and requirements under the Readiness and Emergency Management for Schools (REMS) grant program. The Acting Assistant Deputy Secretary may use these priorities and requirements for competitions in fiscal year (FY) 2009 and later years. We take this action to focus Federal financial assistance on an identified national need. We intend these priorities and requirements to support grants that will increase the capacity of local educational agencies (LEAs) to prevent and mitigate, prepare for, respond to, and recover from emergencies. This action is also taken to focus funding on LEAs that have not previously received funding under this program and to establish other core requirements.

*Effective Date:* These priorities and requirements are effective April 10, 2009.

**FOR FURTHER INFORMATION CONTACT:** Sara Strizzi, U.S. Department of Education, 1391 Speer Boulevard, suite 800, Denver, CO 80204–2512. Telephone: (303) 346–0924 or by e-mail: *sara.strizzi@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service, toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** *Purpose of Program:* Past emergencies, such as the events of September 11, 2001, Hurricanes Katrina and Rita, and emergencies related to other natural and man-made hazards, reinforce the need for schools and communities to plan for traditional crises and emergencies, as well as other catastrophic events. The REMS grant program provides funds to LEAs to establish an emergency management process that focuses on reviewing and strengthening emergency management plans, within the framework of the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery). The program also provides resources to LEAs to provide training for staff on emergency management procedures and requires that LEAs develop comprehensive all-hazards emergency management plans in collaboration with community partners, including local law enforcement; public safety, public health, and mental health agencies; and local government.

**Program Authority:** 20 U.S.C. 7131.

We published a notice of proposed priorities and requirements for this competition in the **Federal Register** on December 23, 2008 (73 FR 78757). That notice contained background information and our reasons for proposing the particular priorities and requirements.

*Public Comment:* In response to our invitation in the notice of proposed priorities and requirements, one party submitted a comment on the proposed priorities and requirements.

Generally, we do not address technical and other minor changes.

*Analysis of Comments and Changes:* An analysis of the comment and of any changes in the priorities and requirements since publication of the notice of proposed priorities and requirements follows.

*Comment:* One commenter recommended that we add the head of the local emergency management agency as a required sixth partner on the grant. The commenter suggested that an LEA's partnership with the local emergency management agency in its jurisdiction will ensure consistent community-wide emergency management planning and training efforts and will contribute to the sustainability of the emergency management process.

*Discussion:* We agree that local emergency management agencies have a significant and valuable role to play in assisting with community-wide emergency planning efforts. We encourage LEAs to work closely with all relevant community partners, including local emergency management agencies, to leverage resources, ensure consistency, and avoid duplication of effort. However, local emergency management agencies do not exist in every community. Some communities do not have a designated local emergency management agency and, instead, vest emergency management authority in other agencies, such as a local fire department, law enforcement agency, or other public safety agency.

If a local emergency management agency is available to participate in a REMS grant project, its assistance is likely to be of significant value. We are interested in grantees securing partner participation from the most relevant community entities and encourage the inclusion of the local emergency management agency as a grant partner if such an agency is present. However, given the significant variation in the types of organizations involved in emergency management activities in communities across the Nation, we must provide flexibility to grantees. We have made a change in the requirement in response to this comment.

*Change:* We have revised Priority 1 and the requirements to clarify that a partner agreement from a local emergency management agency may be used to meet the public safety partner requirement.

**Final Priorities**

*Priority 1—LEA Projects Designed To Develop and Enhance Local Emergency Management Capacity*

This priority supports LEA projects designed to create, strengthen, or improve emergency management plans at the LEA and school-building levels and build the capacity of LEA staff so that the LEA can continue the implementation of key emergency management functions after the period of Federal funding. Projects must include a plan to create, strengthen, or improve emergency management plans, at the LEA and school-building levels, and within the framework of the four phases of emergency management: Prevention-Mitigation, Preparedness, Response, and Recovery. Projects must also include: (1) Training for school personnel in emergency management procedures; (2) coordination, and the use of partnerships, with local law enforcement, public safety or emergency management, public health, and mental health agencies, and local government to assist in the development of emergency management plans at the LEA and school-building levels; (3) a plan to sustain the local partnerships after the period of Federal assistance; (4) a plan for communicating school emergency management policies and reunification procedures for parents and guardians and their children following an emergency; and (5) a written plan for improving LEA capacity to sustain the emergency management process through ongoing training of personnel and continual review of policies and procedures.

*Priority 2—Priority for LEAs That Have Not Previously Received a Grant Under the REMS Program (CFDA Number 84.184E) and Are Located in Urban Areas Security Initiative Jurisdiction*

Under this priority, we give priority to applications from LEAs that (1) have not yet received a grant under this program (CFDA Number 84.184E) and (2) are located in whole or in part within Urban

Areas Security Initiative (UASI) jurisdictions, as determined by the U.S. Department of Homeland Security (DHS). Applicants, including educational service agencies (ESAs), must meet both of these criteria in order to meet this priority. Under a consortium application, all members of the LEA consortium, including any ESAs, must meet both criteria to meet this priority.

Because DHS' determination of UASI jurisdictions may change from year to year, applicants under this priority must refer to the most recent list of UASI jurisdictions published by DHS when submitting their applications. In any notice inviting applications using this priority, the Department will provide applicants with information necessary to access the most recent DHS list of UASI jurisdictions.

*Priority 3—Priority for Applicants That Have Not Previously Received a Grant Under the REMS Program (CFDA Number 84.184E)*

Under this priority, we give priority to applications from LEAs that have not previously received a grant under this program (CFDA Number 84.184E). Applicants, including educational service agencies (ESAs), that have received funding under this program directly, or as the lead agency or as a partner in a consortium application under this program, will not meet this priority. Under a consortium application, all members of the LEA consortium must meet this criterion to meet this priority.

*Types of Priorities:*

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

*Absolute Priority:* Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

*Competitive Preference Priority:* Under a competitive preference priority we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

*Invitational Priority:* Under an invitational priority we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

*Final Requirements:* We may apply one or more of these requirements in any year in which this program is in effect.

*Partner Agreements:* To be considered for a grant award, an applicant must include in its application an agreement that details the participation of each of the following five community-based partners: The law enforcement agency, the public safety or emergency management agency, the public health agency, the mental health agency, and the head of the applicant's local government (for example the mayor, city manager, or county executive). The agreement must include a description of each partner's roles and responsibilities in improving and strengthening emergency management plans at the LEA and school-building levels, a description of each partner's commitment to the continuation and continuous improvement of emergency management plans at the LEA and school-building levels, and the signature of an authorized representative of the LEA and each partner acknowledging the agreement. For consortium applications, each LEA to be served by the grant must submit a complete set of partner agreements with the signature of an authorized representative of the LEA and each corresponding partner acknowledging the agreement.

If one or more of the five partners listed in this requirement is not present in the applicant's community, or cannot feasibly participate, the agreement must explain the absence of each missing partner. To be considered eligible for funding, however, an application must include a signed agreement between the LEA, a law enforcement partner, and at least one of the other required partners (public safety or emergency management agency, public health agency, mental health agency, or the head of the local government).

Applications that fail to include the required agreement, including information on partners' roles and responsibilities and on their commitment to continuation and continuous improvement (with signatures and explanations for missing signatures as specified above), will not be read.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must remain with the LEA.

*Coordination with State or Local Homeland Security Plan:* All emergency management plans receiving funding under this program must be coordinated with the Homeland Security Plan of the State or locality in which the LEA is located. To ensure that emergency services are coordinated, and to avoid duplication of effort within States and localities, applicants must include in their applications an assurance that the LEA will coordinate with and follow the requirements of its State or local Homeland Security Plan for emergency services and initiatives.

*Infectious Disease Plan:* To be considered for a grant award, applicants must agree to develop a written plan designed to prepare the LEA for a possible infectious disease outbreak, such as pandemic influenza. Plans must address the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery) and include a plan for disease surveillance (systematic collection and analysis of data that lead to action being taken to prevent and control a disease), school closure decision making, business continuity (processes and procedures established to ensure that essential functions can continue during and after a disaster), and continuation of educational services.

*Food Defense Plan:* To be considered for a grant award, applicants must agree to develop a written food defense plan that includes the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery) and is designed to safeguard the LEA's food supply, including all food storage and preparation facilities and delivery areas within the LEA.

*Individuals with Disabilities:* Applicants must agree to develop plans that take into consideration the communication, medical, and evacuation needs of individuals with disabilities within the schools in the LEA.

*Implementation of the National Incident Management System (NIMS):* Applicants must agree to implement their grant in a manner consistent with the implementation of the NIMS in their communities. Applicants must include in their applications an assurance that they have met, or will complete, all current NIMS requirements by the end of the grant period.

Because DHS' determination of NIMS requirements may change from year to year, applicants must refer to the most recent list of NIMS requirements published by DHS when submitting their applications. In any notice inviting applications, the Department will provide applicants with information necessary to access the most recent DHS list of NIMS requirements.

**Note:** An LEA's NIMS compliance must be achieved in close coordination with the local government and with recognition of the first-responder capabilities held by the LEA and the local government. As LEAs are not traditional response organizations, first-responder services will typically be provided to LEAs by local fire and rescue departments, emergency medical service providers, and law enforcement agencies. This traditional relationship must be acknowledged in achieving NIMS compliance in an integrated NIMS compliance plan for the local government and the LEA. LEA participation in the NIMS preparedness program of the local government is essential in ensuring that first-responder services are delivered to schools in a timely and effective manner. Additional information about NIMS implementation and requirements is available at *http://www.fema.gov/emergency/nims.*

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

**Note:** This notice does not solicit applications. In any year in which we choose to use one or more of these priorities and requirements, we invite applications through a notice in the **Federal Register**.

*Executive Order 12866:* This notice of final priorities and requirements has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this final regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this final regulatory action, we have determined that the benefits of the final priorities and requirements justify the costs.

We have determined, also, that this final regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

We summarized the costs and benefits of this regulatory action in the notice of proposed priorities and requirements.

*Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to this Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

*Delegation of Authority:* The Secretary of Education has delegated authority to William Modzeleski, Acting Assistant Deputy Secretary for the Office of Safe and Drug-Free Schools to perform the functions of the Assistant Deputy Secretary for Safe and Drug-Free Schools.

Dated: March 4, 2009.

**William Modzeleski,**

*Acting Assistant Deputy Secretary for Safe and Drug-Free Schools.*

[FR Doc. E9–5091 Filed 3–10–09; 8:45 am]

**BILLING CODE 4000–01–P**

Federal Register

Wednesday,
March 11, 2009

## Part III

# Department of Education

**Office of Safe and Drug-Free Schools; Overview Information; Readiness and Emergency Management for Schools; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009; Notice**

## DEPARTMENT OF EDUCATION

### Office of Safe and Drug-Free Schools; Overview Information; Readiness and Emergency Management for Schools; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

*Catalog of Federal Domestic Assistance (CFDA) Number:* 84.184E.

*Dates:*

*Applications Available:* March 11, 2009.

*Deadline for Transmittal of Applications:* April 14, 2009.

*Deadline for Intergovernmental Review:* June 15, 2009.

**Full Text of Announcement**

**I. Funding Opportunity Description**

*Purpose of Program:* Past emergencies, such as the events of September 11, 2001, Hurricanes Katrina and Rita, and emergencies related to other natural and man-made hazards, reinforce the need for schools and communities to plan for traditional crises and emergencies, as well as other catastrophic events. The Readiness and Emergency Management for Schools (REMS) grant program provides funds to local educational agencies (LEAs) to establish an emergency management process that focuses on reviewing and strengthening emergency management plans, within the framework of the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery). The program also provides resources to LEAs to provide training for staff on emergency management procedures and requires that LEAs develop comprehensive all-hazards emergency management plans in collaboration with community partners, including local law enforcement; public safety, public health, and mental health agencies; and local government.

*Priorities:* These priorities are from the notice of final priorities and requirements for this program, published elsewhere in this issue of the **Federal Register**.

*Absolute Priority:* For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

*Develop and Enhance Local Emergency Management Capacity*

Under this priority, we support LEA projects designed to create, strengthen, or improve emergency management plans at the LEA and school-building levels and build the capacity of LEA staff so that the LEA can continue the implementation of key emergency management functions after the period of Federal funding. Projects must include a plan to create, strengthen, or improve emergency management plans, at the LEA and school-building levels, and within the framework of the four phases of emergency management: Prevention-Mitigation, Preparedness, Response, and Recovery. Projects must also include: (1) Training for school personnel in emergency management procedures; (2) coordination, and the use of partnerships, with local law enforcement, public safety or emergency management, public health, and mental health agencies, and local government to assist in the development of emergency management plans at the LEA and school-building levels; (3) a plan to sustain the local partnerships after the period of Federal assistance; (4) a plan for communicating school emergency management policies and reunification procedures for parents and guardians and their children following an emergency; and (5) a written plan for improving LEA capacity to sustain the emergency management process through ongoing training and the continual review of policies and procedures.

*Competitive Preference Priorities:* For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award an additional 10 points to an application that meets Priority 1 and we award an additional 5 points to an application that meets Priority 2. Applications that meet both Priorities 1 and 2 will receive points only under Priority 1.

These priorities are:

*Priority 1—LEAs That Have Not Previously Received a Grant Under the REMS Program (CFDA Number 84.184E) and Are Located in an Urban Areas Security Initiative Jurisdiction*

Under this priority, we give a competitive preference to applications from LEAs that (1) have not yet received a grant under this program (CFDA Number 84.184E) and (2) are located in whole or in part within Urban Areas Security Initiative (UASI) jurisdictions, as determined by the U.S. Department of Homeland Security (DHS). Applicants, including educational services agencies (ESAs), must meet both of these criteria in order to meet this priority. Under a consortium application, all members of the LEA consortium, including any ESAs, must meet both criteria to meet this priority.

Because DHS's determination of UASI jurisdictions may change from year to year, applicants under this priority must refer to the most recent list of UASI jurisdictions published by DHS when submitting their applications.

**Note:** The Governor of each State has designated a State Administrative Agency (SAA) as the entity responsible for applying for and administering funds under the Department of Homeland Security Grant Program (which includes the UASI program). The SAA is also responsible for defining the geographic borders for jurisdictions included in the UASI program. Guidance on jurisdiction definitions and the most recent list of UASI jurisdictions (see pages 22 and 23) can be found at *http://www.fema.gov/pdf/government/grant/hsgp/fy09_hsgp_guidance.pdf*.

*Priority 2—LEAs That Have Not Previously Received a Grant Under the REMS Program (CFDA Number 84.184E)*

Under this priority, we give competitive preference to applications from LEAs that have not previously received a grant under this program (CFDA Number 84.184E). Applicants, including educational service agencies (ESAs), that have received funding under this program directly, or as the lead agency or as a partner in a consortium application under this program, will not meet this priority. Under a consortium application, all members of the LEA consortium must meet this criterion to meet this priority.

*Application Requirements:* The following requirements apply to all applications submitted under this competition:

*1. Partner Agreements*

To be considered for a grant award, an applicant must include in its application an agreement that details the participation of each of the following five community-based partners: The law enforcement agency, the public safety or emergency management agency, the public health agency, the mental health agency, and the head of the applicant's local government (for example the mayor, city manager, or county executive). The agreement must include a description of each partner's roles and responsibilities in improving and strengthening emergency management plans at the LEA and school-building levels, a description of each partner's commitment to the continuation and continuous improvement of emergency management plans at the LEA and school-building levels, and the signature of an authorized representative of the LEA and each partner acknowledging the agreement. For consortium

applications, each LEA to be served by the grant must submit a complete set of partner agreements with the signature of an authorized representative of the LEA and each corresponding partner acknowledging the agreement.

If one or more of the five partners listed in this requirement is not present in the applicant's community, or cannot feasibly participate, the agreement must explain the absence of each missing partner. To be considered eligible for funding, however, an application must include a signed agreement between the LEA, a law enforcement partner, and at least one of the other required partners (public safety or emergency management agency, public health agency, mental health agency, or the head of the local government).

Applications that fail to include the required agreement, including information on partners' roles and responsibilities and on their commitment to continuation and continuous improvement (with signatures and explanations for missing signatures as specified above), will not be read.

Although this program requires partnerships with other parties, administrative direction and fiscal control for the project must remain with the LEA.

*2. Coordination With State or Local Homeland Security Plan*

All emergency management plans receiving funding under this program must be coordinated with the Homeland Security Plan of the State or locality in which the LEA is located. To ensure that emergency services are coordinated, and to avoid duplication of effort within States and localities, applicants must include in their applications an assurance that the LEA will coordinate with and follow the requirements of its State or local Homeland Security Plan for emergency services and initiatives.

*3. Infectious Disease Plan*

To be considered for a grant award, applicants must agree to develop a written plan designed to prepare the LEA for a possible infectious disease outbreak, such as pandemic influenza. Plans must address the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery) and include a plan for disease surveillance (systematic collection and analysis of data that lead to action being taken to prevent and control a disease), school closure decision making, business continuity (processes and procedures established to ensure that essential functions can continue during and after a disaster), and continuation of educational services.

*4. Food Defense Plan*

To be considered for a grant award, applicants must agree to develop a written food defense plan that includes the four phases of emergency management (Prevention-Mitigation, Preparedness, Response, and Recovery) and is designed to safeguard the LEA's food supply, including all food storage and preparation facilities and delivery areas within the LEA.

*5. Individuals With Disabilities*

Applicants must agree to develop plans that take into consideration the communication, medical, and evacuation needs of individuals with disabilities within the schools in the LEA.

*6. Implementation of the National Incident Management System (NIMS)*

Applicants must agree to implement their grant in a manner consistent with the implementation of the NIMS in their communities. Applicants must include in their applications an assurance that they have met, or will complete, all current NIMS requirements by the end of the grant period.

Because DHS' determination of NIMS requirements may change from year to year, applicants must refer to the most recent list of NIMS requirements published by DHS when submitting their applications. Information about the FY 2008 NIMS requirements for tribal governments and local jurisdictions, including LEAs, can be found at: *http://www.fema.gov/emergency/nims/CurrentYearGuidance.shtm.*

**Note:** An LEA's NIMS compliance must be achieved in close coordination with the local government and with recognition of the first-responder capabilities held by the LEA and the local government. As LEAs are not traditional response organizations, first-responder services will typically be provided to LEAs by local fire and rescue departments, emergency medical service providers, and law enforcement agencies. This traditional relationship must be acknowledged in achieving NIMS compliance in an integrated NIMS compliance plan for the local government and the LEA. LEA participation in the NIMS preparedness program of the local government is essential in ensuring that first-responder services are delivered to schools in a timely and effective manner. Additional information about NIMS implementation is available at: *http://www.fema.gov/emergency/nims.*

**Program Authority:** 20 U.S.C. 7131.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final priorities and requirements, published elsewhere in this issue of the **Federal Register**. (c) The notice of final eligibility requirement for the Office of Safe and Drug-Free Schools discretionary grant programs published in the **Federal Register** on December 4, 2006 (71 FR 70369).

**Note:** The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

## II. Award Information

*Type of Award:* Discretionary grants.

*Estimated Available Funds:* $26,000,000. The actual level of funding, if any, depends on final Congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds to this program. Contingent upon the availability of funds and the quality of applications, we may make additional awards later in FY 2009 and in FY 2010 from the list of unfunded applicants from this competition.

*Estimated Range of Awards:* $100,000-$500,000.

*Estimated Average Size of Awards:* $100,000 for a small-size LEA (1–20 education facilities); $250,000 for a medium-size LEA (21–75 education facilities); and $500,000 for a large-size LEA (76 or more education facilities).

*Estimated Number of Awards:* 104.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* Up to 18 months.

## III. Eligibility Information

*1. Eligible Applicants*

LEAs, including charter schools that are considered LEAs under State law, that do not currently have an active grant under the REMS program (CFDA Number 84.184E). For the purpose of this eligibility requirement, a grant is considered active until the end of the grant's project or funding period, including any extension of those periods that extend the grantee's authority to obligate funds. This eligibility requirement is from the notice of final eligibility requirement published in the **Federal Register** on December 4, 2006 (71 FR 70369).

*2. Cost Sharing or Matching*

This competition does not require cost sharing or matching.

*3. Other*

(a) Equitable Participation by Private School Children and Teachers

Section 9501 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), requires that State educational agencies (SEAs), LEAs, or other entities receiving funds under the Safe and Drug-Free Schools and Communities Act provide for the equitable participation of private school children, their teachers, and other educational personnel in private schools located in areas served by the grant recipient. In order to ensure that grant program activities address the needs of private school children, LEAs must engage in timely and meaningful consultation with private school officials during the design and development of the program. This consultation must take place before any decision is made that affects the opportunities of eligible private school children, teachers, and other education personnel to participate.

In order to ensure equitable participation of private school children, teachers, and other educational personnel, an LEA must consult with private school officials on such issues as: Hazards/vulnerabilities unique to private schools in the LEA's service area, training needs, and existing emergency management plans and resources already available at private schools.

(b) Maintenance of Effort

Section 9521 of the ESEA permits LEAs to receive a grant only if the SEA finds that the combined fiscal effort per student or the aggregate expenditures of the LEA and the State with respect to the provision of free public education by the LEA for the preceding fiscal year was not less than 90 percent of the combined fiscal effort or aggregate expenditures for the second preceding fiscal year.

**IV. Application and Submission Information**

*1. Address To Request Application Package*

You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.* To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. Fax: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA Number 84.184E.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

*2. Content and Form of Application Submission*

Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

*3. Submission Dates and Times*

*Applications Available:* March 11, 2009.

*Deadline for Transmittal of Applications:* April 14, 2009.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (*http://Grants.gov*), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

*Deadline for Intergovernmental Review:* June 15, 2009.

*4. Intergovernmental Review*

This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

*5. Funding Restrictions*

We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

*6. Other Submission Requirements*

Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. Electronic Submission of Applications

We are participating as a partner in the Governmentwide Grants.gov Apply site. The REMS grant competition, CFDA number 84.184E, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the REMS grant competition at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.184, not 84.184E).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after

4:30:00 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (*see http://www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

*Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System:* If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under *For Further Information Contact* in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

**Note:** The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. Submission of Paper Applications by Mail

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184E), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

**Note:** The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.184E), 550 12th

Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

*Note for Mail or Hand Delivery of Paper Applications:* If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

## V. Application Review Information

*Selection Criteria:* The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

## VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section in this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section in this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For this competition, you must also submit an interim report nine months after the award date. For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measure:* We have identified the following key Government Performance and Results Act of 1993 (GPRA) performance measure for assessing the effectiveness of the REMS grant program: The average number of National Incident Management System (NIMS) course completions by key personnel at the start of the grant compared to the average number of NIMS course completions by key personnel at the end of the grant.

This GPRA measure constitutes the Department's indicator of success for this program. Applicants for a grant under this program are advised to give careful consideration to this measure in designing their proposed project, including considering how data for the measure will be collected. Grantees will be required to collect and report, in their interim and final performance reports, baseline data and data on their progress with regard to this measure.

## VII. Agency Contact

*For Further Information Contact:* Sara Strizzi, U.S. Department of Education, 1391 Speer Boulevard, Suite 800, Denver, CO 80204–2512. Telephone: (303) 346–0924 or by e-mail: *sara.strizzi@ed.gov.*

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact:* in section VII in this notice.

*Electronic Access to this Document:* You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

*Delegation of Authority:* The Secretary of Education has delegated authority to William Modzeleski, Acting Assistant Deputy Secretary for the Office of Safe and Drug-Free Schools to perform the functions of the Assistant Deputy Secretary for Safe and Drug-Free Schools.

Dated: March 4, 2009.

**William Modzeleski,**

*Acting Assistant Deputy Secretary for Safe and Drug-Free Schools.*

[FR Doc. E9–5099 Filed 3–10–09; 8:45 am]

**BILLING CODE 4000–01–P**

Federal Register

Wednesday,
March 11, 2009

## Part IV

# The President

**Executive Order 13505—Removing Barriers to Responsible Scientific Research Involving Human Stem Cells**

**Memorandum of March 9, 2009—Presidential Signing Statements**

**Memorandum of March 9, 2009—Scientific Integrity**

Federal Register
Vol. 74, No. 46
Wednesday, March 11, 2009

# Presidential Documents

**Title 3—**

## The President

**Executive Order 13505 of March 9, 2009**

## Removing Barriers to Responsible Scientific Research Involving Human Stem Cells

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

**Section 1.** *Policy.* Research involving human embryonic stem cells and human non-embryonic stem cells has the potential to lead to better understanding and treatment of many disabling diseases and conditions. Advances over the past decade in this promising scientific field have been encouraging, leading to broad agreement in the scientific community that the research should be supported by Federal funds.

For the past 8 years, the authority of the Department of Health and Human Services, including the National Institutes of Health (NIH), to fund and conduct human embryonic stem cell research has been limited by Presidential actions. The purpose of this order is to remove these limitations on scientific inquiry, to expand NIH support for the exploration of human stem cell research, and in so doing to enhance the contribution of America's scientists to important new discoveries and new therapies for the benefit of humankind.

**Sec. 2.** *Research.* The Secretary of Health and Human Services (Secretary), through the Director of NIH, may support and conduct responsible, scientifically worthy human stem cell research, including human embryonic stem cell research, to the extent permitted by law.

**Sec. 3.** *Guidance.* Within 120 days from the date of this order, the Secretary, through the Director of NIH, shall review existing NIH guidance and other widely recognized guidelines on human stem cell research, including provisions establishing appropriate safeguards, and issue new NIH guidance on such research that is consistent with this order. The Secretary, through NIH, shall review and update such guidance periodically, as appropriate.

**Sec. 4.** *General Provisions.* (a) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

**Sec. 5.** *Revocations.* (a) The Presidential statement of August 9, 2001, limiting Federal funding for research involving human embryonic stem cells, shall have no further effect as a statement of governmental policy.

(b) Executive Order 13435 of June 20, 2007, which supplements the August 9, 2001, statement on human embryonic stem cell research, is revoked.

THE WHITE HOUSE,
*March 9, 2009.*

[FR Doc. E9–5441
Filed 3–10–09; 11:15 am]
Billing code 3195–W9–P

# Presidential Documents

**Memorandum of March 9, 2009**

## Presidential Signing Statements

**Memorandum for the Heads of Executive Departments And Agencies**

For nearly two centuries, Presidents have issued statements addressing constitutional or other legal questions upon signing bills into law (signing statements). Particularly since omnibus bills have become prevalent, signing statements have often been used to ensure that concerns about the constitutionality of discrete statutory provisions do not require a veto of the entire bill.

In recent years, there has been considerable public discussion and criticism of the use of signing statements to raise constitutional objections to statutory provisions. There is no doubt that the practice of issuing such statements can be abused. Constitutional signing statements should not be used to suggest that the President will disregard statutory requirements on the basis of policy disagreements. At the same time, such signing statements serve a legitimate function in our system, at least when based on well-founded constitutional objections. In appropriately limited circumstances, they represent an exercise of the President's constitutional obligation to take care that the laws be faithfully executed, and they promote a healthy dialogue between the executive branch and the Congress.

With these considerations in mind and based upon advice of the Department of Justice, I will issue signing statements to address constitutional concerns only when it is appropriate to do so as a means of discharging my constitutional responsibilities. In issuing signing statements, I shall adhere to the following principles:

1. The executive branch will take appropriate and timely steps, whenever practicable, to inform the Congress of its constitutional concerns about pending legislation. Such communication should facilitate the efforts of the executive branch and the Congress to work together to address these concerns during the legislative process, thus minimizing the number of occasions on which I am presented with an enrolled bill that may require a signing statement.

2. Because legislation enacted by the Congress comes with a presumption of constitutionality, I will strive to avoid the conclusion that any part of an enrolled bill is unconstitutional. In exercising my responsibility to determine whether a provision of an enrolled bill is unconstitutional, I will act with caution and restraint, based only on interpretations of the Constitution that are well-founded.

3. To promote transparency and accountability, I will ensure that signing statements identify my constitutional concerns about a statutory provision with sufficient specificity to make clear the nature and basis of the constitutional objection.

4. I will announce in signing statements that I will construe a statutory provision in a manner that avoids a constitutional problem only if that construction is a legitimate one.

To ensure that all signing statements previously issued are followed only when consistent with these principles, executive branch departments and agencies are directed to seek the advice of the Attorney General before relying on signing statements issued prior to the date of this memorandum as the basis for disregarding, or otherwise refusing to comply with, any provision of a statute.

This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

This memorandum shall be published in the *Federal Register*.

THE WHITE HOUSE,
*Washington, March 9, 2009*

[FR Doc. E9–5442
Filed 3–10–09; 11:15 am]
Billing code 3195–W9–P

# Presidential Documents

**Memorandum of March 9, 2009**

## Scientific Integrity

**Memorandum for the Heads of Executive Departments and Agencies**

Science and the scientific process must inform and guide decisions of my Administration on a wide range of issues, including improvement of public health, protection of the environment, increased efficiency in the use of energy and other resources, mitigation of the threat of climate change, and protection of national security.

The public must be able to trust the science and scientific process informing public policy decisions. Political officials should not suppress or alter scientific or technological findings and conclusions. If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public. To the extent permitted by law, there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking. The selection of scientists and technology professionals for positions in the executive branch should be based on their scientific and technological knowledge, credentials, experience, and integrity.

By this memorandum, I assign to the Director of the Office of Science and Technology Policy (Director) the responsibility for ensuring the highest level of integrity in all aspects of the executive branch's involvement with scientific and technological processes. The Director shall confer, as appropriate, with the heads of executive departments and agencies, including the Office of Management and Budget and offices and agencies within the Executive Office of the President (collectively, the ''agencies''), and recommend a plan to achieve that goal throughout the executive branch.

Specifically, I direct the following:

1. Within 120 days from the date of this memorandum, the Director shall develop recommendations for Presidential action designed to guarantee scientific integrity throughout the executive branch, based on the following principles:

(a) The selection and retention of candidates for science and technology positions in the executive branch should be based on the candidate's knowledge, credentials, experience, and integrity;

(b) Each agency should have appropriate rules and procedures to ensure the integrity of the scientific process within the agency;

(c) When scientific or technological information is considered in policy decisions, the information should be subject to well-established scientific processes, including peer review where appropriate, and each agency should appropriately and accurately reflect that information in complying with and applying relevant statutory standards;

(d) Except for information that is properly restricted from disclosure under procedures established in accordance with statute, regulation, Executive Order, or Presidential Memorandum, each agency should make available to the public the scientific or technological findings or conclusions considered or relied on in policy decisions;

(e) Each agency should have in place procedures to identify and address instances in which the scientific process or the integrity of scientific and technological information may be compromised; and

(f) Each agency should adopt such additional procedures, including any appropriate whistleblower protections, as are necessary to ensure

the integrity of scientific and technological information and processes on which the agency relies in its decisionmaking or otherwise uses or prepares.

2. Each agency shall make available any and all information deemed by the Director to be necessary to inform the Director in making recommendations to the President as requested by this memorandum. Each agency shall coordinate with the Director in the development of any interim procedures deemed necessary to ensure the integrity of scientific decisionmaking pending the Director's recommendations called for by this memorandum.

3. (a) Executive departments and agencies shall carry out the provisions of this memorandum to the extent permitted by law and consistent with their statutory and regulatory authorities and their enforcement mechanisms.

(b) Nothing in this memorandum shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This memorandum is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

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

THE WHITE HOUSE,
*Washington, March 9, 2009*

[FR Doc. E9–5443
Filed 3–10–09; 11:15 am]
Billing code 3170–W8–P

# Reader Aids

**Federal Register**

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**S. 234/P.L. 111–7**

To designate the facility of the United States Postal Service located at 2105 East Cook Street in Springfield, Illinois, as the ''Colonel John H. Wilson, Jr. Post Office Building''. (Mar. 9, 2009; 123 Stat. 523)

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