

securities priced below \$1.00 nor does it apply to odd lot orders routed to NYSE Arca; such order types will continue to be priced as set forth on the Exchange's fee schedule. In addition, the Exchange will maintain the pricing currently charged by the Exchange for BATS + NYSE ARCA Destination Specific Orders for Tape B securities and for all other Destination Specific Orders.

## 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.<sup>7</sup> Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,<sup>8</sup> 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. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members.

### B. Self-Regulatory Organization's Statement on 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 on 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<sup>9</sup> and Rule 19b-4(f)(2) thereunder,<sup>10</sup> 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 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](mailto:rule-comments@sec.gov). Please include File Number SR-BATS-2009-017 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-BATS-2009-017. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-BATS-2009-017 and

should be submitted on or before July 1, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

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BILLING CODE 8010-01-P

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### Office of Hazardous Materials Safety; Notice of Application for Special Permits

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

**ACTION:** List of applications for special permits.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before July 10, 2009.

**ADDRESSES:** *Address Comments to:* Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, East Building, PHH-30, 1200 New Jersey Avenue, Southeast, Washington DC or at <http://fdms.gov>.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>7</sup> 15 U.S.C. 78f.

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).

Issued in Washington, DC, on June 3, 2009.

**Delmer F. Billings,**

*Director, Office of Hazardous Materials,  
Special Permits and Approvals.*

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
<b>New Special Permits</b>				
14853-N .....		E.I. DuPont de Nemours & Company, Inc., Wilmington, DE.	49 CFR .....	To authorize the one-time, one-way transportation in commerce of a damaged DOT Specification 51 portable tank containing the residue of a non-flammable liquefied gas for repair.
14854-N .....		Airgas, Inc., Radnor, PA.	49 CFR 180.209 .....	To authorize the transportation in commerce of certain DOT 3AL cylinders manufactured from aluminum alloy 6061-T6 that are requalified every ten years rather than every five years using 100% ultrasonic examination and are not required to be hammer tested prior to each refill. (modes 1,2,3,4)
14855-N .....		Portersville Sales and Testing, Inc., Portersville, PA.	49 CFR 180.209(a) and (b)	To authorize the transportation in commerce of DOT 3A, 3AA, 3AX, 3AAX and 3T cylinders in MEGC's tube trailers, and independantly packaged cylinders mounted on transportable framework to be periodically requalified every ten years using test methods authorized under DOT-SP 12629 or 14453. (modes 1, 2, 3, 4)
14856-N .....		BKC Industries, Inc., Creedmoor, NC.	49 CFR 180.209(a) and (b)	To authorize the transportation in commerce of DOT 3A, 3AA, 3AX, 3AAX and 3T cylinders in MEGC's tube trailers, and independantly packaged cylinders mounted on transportable framework to be periodically requalified every ten years using test methods authorized under DOT-SP 12629 or 14453. (modes 1,2,3,4)
14857-N .....		Western Sales & Testing, Amarillo, TX.	49 CFR 180.209(a) and (b)	To authorize the transportation in commerce of DOT 3A, 3AA, 3AX, 3AAX and 3T cylinders in MEGC's tube trailers, and independantly packaged cylinders mounted on transportable framework to be periodically requalified every ten years using test methods authorized under DOT-SP 12629 or 14453. (modes 1,2,3,4)
14858-N .....		ECI Fuel Systems, Mira Loma, CA.	49 CFR 177.834(h) and 178.700 to 178.819.	To authorize the manufacture, mark and to sale of refueling tanks of less than 119 gallon capacity as intermediate bulk containers for use in transporting various Class 3 hazardous materials. (mode 1)
14859-N .....		Minuteman Aviation Inc. (MAI), Missoula, MT.	49 CFR 172.101 HMT Column (9B), 172.200, 172.300, 172.400.	To authorize the transportation of certain forbidden explosives and other hazardous materials by helicopter in remote areas of the US for seismic exploration without being subject to hazard communication requirements and quantity limitations. (mode 4)
14860-N .....		Alaska Airlines, Seattle, WA.	49 CFR 173.302(f) .....	To authorize the transportation in commerce of cylinders of compressed oxygen and oxidizing gases without rigid outer packaging when no other means of transportation exist. (mode 4)
14861-N .....		Gliko Aviation Inc., Belt, MT.	49 CFR 172.101 HMT Column (9B), 172.200, 172.300, 172.400.	To authorize the transportation of certain forbidden explosives and other hazardous materials by helicopter in remote areas of the US for seismic exploration without being subject to hazard communication requirements and quantity limitations. (mode 4)
14862-N .....		U.S. Custom Harvesters, Inc., Hutchinson, KS.	49 CFR 172.504 .....	To authorize the transportation in commerce of 1,000 gallons of diesel fuel without placarding the motor vehicle. (mode 1)

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14864-N .....		Balchem Corporation, New Hampton, NY.	49 CFR 173.24(b)(1), 174.3 and 177.834(h).	To authorize the transportation in commerce of ethylene and allows for the controlled release of the hazardous material for the purposes of ripening fruits or vegetables. (modes 1, 2)
14865-N .....		Alaska Railroad Corporation, Anchorage, AK.	49 CFR 172.101 Column (9A).	To authorize the transportation in commerce of liquefied petroleum gas in a specially designed vault when transported by railroad in Alaska. (mode 2)
14866-N .....		Fluorochemika Laboratories, LLC, Wilmington, DE.	49 CFR 173.301(f)(1) .....	To authorize the transportation in commerce of sulfuryl fluoride in certain DOT specification cylinders that are not equipped with a pressure relief device. (modes 1, 2, 3)
14867-N .....		GTM Technologies, Inc., Amarillo, TX.	49 CFR 173.302a, 173.304a.	To authorize the manufacture, marking, sale and use of non-DOT specification fiber reinforced hoop wrapped cylinders with water capacities of up to 120 cubic feet for use in transporting certain Class 2 gases. (modes 1, 2, 3, 4, 5)
14868-N .....		Wal-Mart Stores, Inc., Bentonville, AR.	49 CFR 172.102(c) Special provision 130, 172.200(a) and 173.185(d).	To authorize the transportation in commerce of certain batteries intended for recycling, disposal or liquidation in an alternative packaging configuration transported under refrigeration. (mode 1)
14869-N .....		Airgas, Inc., Cheyenne, WY.	49 CFR 178.337-17 .....	To authorize the transportation in commerce of two non-DOT specification cargo tank motor vehicles that have missing ASME identification plates. (mode 1)

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BILLING CODE 4909-60-M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Intent To Prepare an Environmental Impact Statement USH 41, Brown County, WI

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for transportation improvements in the USH 41 corridor in Brown County, Wisconsin. The EIS is being prepared in conformance with 40 CFR 1500 and FHWA regulations.

**SUPPLEMENTARY INFORMATION:** The Federal Highway Administration (FHWA), in cooperation with the Wisconsin Department of Transportation (WisDOT), will prepare an Environmental Impact Statement (EIS) on improvements needed to safely accommodate local and regional traffic and to preserve the traffic carrying capacity on an approximate 3.5-mile portion of USH 41 between Memorial Drive and CTH M (Lineville Road) including the reconstruction of the interchange at USH 41 and Interstate 43

in the City of Green Bay, the Village of Howard and the Village of Suamico, Brown County, Wisconsin. The EIS will evaluate no build and build alternatives for this portion of the USH 41 corridor.

Participation by the public, local officials, State and Federal regulatory agencies, American Indian Tribes and other interests will be solicited through public information meetings, agency coordination meetings, and a public hearing. Opportunities to be participating and/or cooperating agencies and to provide input on the project's coordination plan and impact assessment methodology will also be provided under section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

This study shall comply with Title VI of the Civil Rights Act and of Executive Order 12898, which prohibits discrimination on the basis of race, color, age, sex, or country of national origin in the implementation of this action. To ensure that the full range of issues related to this proposed action is addressed, and all substantive issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to FHWA or WisDOT at the addresses provided below (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

#### FOR FURTHER INFORMATION CONTACT:

David Platz, Field Operations Engineer, Federal Highway Administration, 525 Junction Road, Suite 8000, Madison, WI 53717-2157; Telephone: (608) 829-7509. You may also contact Eugene Johnson, Director, Bureau of Equity and Environmental Services, Wisconsin Department of Transportation, P.O. Box 7916, Madison, Wisconsin 53707-7916; Telephone: (608) 267-9527.

An electronic copy of this document may be downloaded from the Government Printing Office's Electronic Bulletin Board Service at (202) 512-1661 by using a computer modem and suitable communications software. Internet users may reach the Office of Federal Register's home page at: <http://www.archives.gov/> and the Government Printing Office's database at: <http://www.gpoaccess.gov/nara/index.html>.

**Authority:** 23 U.S.C. 315; 49 CFR 1.48.

Issued on June 4, 2009.

#### Tracey McKenney,

*Program Operations Engineer, Federal Highway Administration, Madison, Wisconsin.*

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