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Presidential Documents

Title 3—

The President

Presidential Determination No. 2009–19 of June 5, 2009

Suspension of Limitations Under the Jerusalem Embassy Act

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President by the Constitution and the laws of the United States, including section 7(a) of the Jerusalem Embassy Act of 1995 (Public Law 104–45) (the ''Act''), I hereby determine that it is necessary, in order to protect the national security interests of the United States, to suspend for a period of 6 months the limitations set forth in sections 3(b) and 7(b) of the Act.

You are hereby authorized and directed to transmit this determination to the Congress, accompanied by a report in accordance with section 7(a) of the Act, and to publish the determination in the *Federal Register*.

This suspension shall take effect after transmission of this determination and report to the Congress.

THE WHITE HOUSE,
Washington, June 5, 2009

[FR Doc. E9–14051
Filed 6–11–09; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 74, No. 112
Friday, June 12, 2009

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

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

ELECTION ASSISTANCE COMMISSION

11 CFR 9430

Debt Collection

AGENCY: United States Election Assistance Commission (EAC).

ACTION: Final rule.

SUMMARY: The Debt Collection Act requires federal agencies to either adopt existing regulations or promulgate its own regulations governing the collection of debts owed to the federal government. The U.S. Election Assistance Commission (EAC) is a federal agency, and has decided to implement the regulations jointly issued by the Treasury Department and the Department of Justice entitled Federal Claims Collection Standards by cross referencing these regulations as discussed in this rule.

DATES: This rule is effective on June 12, 2009.

FOR FURTHER INFORMATION CONTACT: Tamar Nedzar, Attorney, U.S. Election Assistance Commission, 1225 New York Avenue, NW., Suite 1100, Washington, DC 20005. Telephone (202) 566–3100.

SUPPLEMENTARY INFORMATION:

Preamble Table of Contents

The following is an outline of the preamble.

I. Legal Basis for the Rulemaking
II. Discussion of the Rulemaking
III. Rulemaking Analyses and Notices

I. Legal Basis for the Rulemaking

This rulemaking action is taken in response to the Debt Collection Act, as amended, 31 U.S.C. 3701, *et seq.* The Debt Collection Act requires federal agencies to either adopt existing regulations or promulgate its own regulations governing the collection of debts owed to the federal government. U.S. Election Assistance Commission (EAC) is a federal agency, and has decided to implement the regulations jointly issued by the Treasury Department and the Department of Justice, at 31 CFR parts 900–904. The EAC is also reserving additional sections in 11 CFR part 9430 for possible supplemental debt collection regulations specific to EAC's unique grant programs.

II. Discussion of the Rulemaking

The United States Election Assistance Commission was created by Congress in the Help America Vote Act of 2002. The Commission's primary function is to serve as a national clearinghouse and resource for information on and procedures for federal elections. The EAC conducts studies on election administration and makes those studies available to the public. The EAC also has adopted Voluntary Voting System Guidelines; administers a voting system testing and certification program; allocates election-related federal funding to the States; and carries out administrative duties under the National Voter Registration Act of 1993 (the Motor Voter Law), including developing and maintaining a mail voter registration application form for elections to federal office.

The EAC is committed to administering funds in a financially responsible manner. To implement this goal, pursuant to 31 U.S.C. 3716(b), the EAC is cross-referencing existing regulations governing the collection of debts owed to the federal government.

III. Regulatory Analyses and Notices

Regulatory Flexibility Act, as Amended

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (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 APA or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions. The EAC certifies that this rulemaking is not subject to notice and comment under the APA, and as a result, no regulatory flexibility analysis is required.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a rule likely to result in a federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $120.7 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The EAC has determined that this action would create no unfunded mandates because it requires no expenditures by a State, local, or tribal government and will not have an impact of $120.7 million or more in any one year.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by SBREFA, provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. If the rule meets the definition of a major rule, as defined in SBREFA, the Comptroller General must provide a report to Congress and the rule may not take effect until 60 days after it has been published in the **Federal Register**. The current action is a Final Rule that does not meet the definition of a major rule. The EAC is submitting the necessary rule report to the Congress and the Comptroller General of the United States.

National Environmental Policy Act

The EAC analyzed these rules for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined that this action includes no circumstances that would have any effect on the quality of the environment. These rules pertain solely to the collection of debts owed to the federal government. Thus, these actions do not require an environmental assessment or an environmental impact statement.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires the EAC to consider the impact of paperwork and

other information collection burdens imposed on the public. This action does not impose any reporting or recordkeeping requirements. It pertains solely to the collection of debts owed to the federal government.

Executive Order 12630 (Taking of Private Property)

This action would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights.''

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (April 23, 1997, 62 FR 19885), requires that agencies issuing economically significant rules, which also concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a covered regulatory action an evaluation of its environmental health or safety effects on children. The EAC has determined that these rules are not covered regulatory actions as defined under Executive Order 13045. This determination is based upon the fact that this action is not economically significant under Executive Order 12866, because the changes proposed would not have an impact of $100 million or more in any one year, and do not constitute an environmental health risk or safety risk that would disproportionately affect children.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities do not apply to this rulemaking.

Executive Order 13211 (Energy Supply, Distribution, or Use)

The EAC has analyzed this action under Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' This proposal is not a significant energy action within the meaning of section 4(b) of the Executive Order. This rule involves internal procedures of the collection of debts owed to the federal government, is not economically significant, and will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects 11 CFR Part 9430

Administrative practice and procedure, Debts, Claims.

■ In consideration of the foregoing, EAC amends title 11, Code of Federal Regulations, chapter II, by adding Part 9430 to read as follows:

PART 9430—DEBT COLLECTION

Sec.

9430.1 Cross-reference to executive branch-wide debt collection regulations
9430.2 [Reserved]
9430.3 [Reserved]
9430.4 [Reserved]
9430.5 [Reserved]

Authority: 31 U.S.C. 3716(b); 31 U.S.C. 3711(d)(2); 31 CFR parts 900–904,

§ 9430.1 Cross-reference to executive branch-wide debt collection regulations.

The U.S. Election Assistance Commission adopts the regulations at 31 CFR parts 900–904, governing administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b).

§ 9430.2 [Reserved]

§ 9430.3 [Reserved]

§ 9430.4 [Reserved]

§ 9430.5 [Reserved]

Thomas R. Wilkey,

Executive Director, U.S. Election Assistance Commission.

[FR Doc. E9–13859 Filed 6–11–09; 8:45 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0284; Directorate Identifier 2009–CE–016–AD; Amendment 39–15939; AD 2009–12–16]

RIN 2120–AA64

Airworthiness Directives; Dornier Luftfahrt GmbH Models Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 Airplanes

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

ACTION: Final rule.

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

The manufacturer reported findings of missing primer on the internal of the elevator and rudder of aircraft S/N 8200. The aircraft S/N 8200 was with RUAG for maintenance purposes. Investigation performed by RUAG showed that the paint removal procedure for the rudder and elevator was changed from a paint stripping with brush and scraper to a procedure where the parts were submerged in a tank filled with hot liquid stripper. The stripper is called TURCO 5669 from Henkel Surface Technologies. The stripping process is described in the Technical Process Bulletin No. 238799 dated 09/01/1999. This paint stripping process change was not communicated to and not approved by the TC–Holder.

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

DATES: This AD becomes effective July 17, 2009.

On July 17, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Greg Davison, Glider Program Manager, 901 Locust, Room 301, Kansas City,

Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

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 March 30, 2009 (74 FR 14097), and proposed to supersede AD 2008–08–15, Amendment 39–15467 (73 FR 21220; April 21, 2008). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

> The manufacturer reported findings of missing primer on the internal of the elevator and rudder of aircraft S/N 8200. The aircraft S/N 8200 was with RUAG for maintenance purposes. Investigation performed by RUAG showed that the paint removal procedure for the rudder and elevator was changed from a paint stripping with brush and scraper to a procedure where the parts were submerged in a tank filled with hot liquid stripper. The stripper is called TURCO 5669 from Henkel Surface Technologies. The stripping process is described in the Technical Process Bulletin No. 238799 dated 09/01/1999. This paint stripping process change was not communicated to and not approved by the TC–Holder.

Corrosion damage can occur through insufficient surface protection. Consequently, the MCAI requires a detailed visual inspection of the inner structure of the rudder and elevator for signs of corrosion, de-bonded primer (yellow-green), and any deviation of surface protection. If the inspection results show corrosion beyond the acceptable level or areas with de-bonded primer, the inspection results have to be reported to RUAG Aerospace Services GmbH for further decisions. If necessary, repair the affected parts in accordance with the applicable repair instruction obtained from RUAG Aerospace Services GmbH.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 17 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $4,080, or $240 per product.

We have no way of determining the number of airplanes or the associated costs of any follow-on repairs or replacements that might be required by this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15467 (73 FR 21220; April 21, 2008) and adding the following new AD:

2009–12–16 Dornier Luftfahrt GmbH: Amendment 39–15939; Docket No. FAA–2009–0284; Directorate Identifier 2009–CE–016–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 17, 2009.

Affected ADs

(b) This AD supersedes AD 2008–08–15, Amendment 39–15467.

Applicability

(c) This AD applies to Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 airplanes, all serial numbers, that:

(1) Are certificated in any category; and

(2) have had the rudder and/or elevator replaced or repaired at Fairchild Dornier or RUAG between the year 2000 and 2005. The concerned rudder and elevator part numbers and serial numbers are listed on page 7 of RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270 (includes undated attachments 1 and 2 to SB–228–270 Rev. 1), Rev. No. 1, dated November 28, 2008.

Subject

(d) Air Transport Association of America (ATA) Code 51: Standard Practices/Structures.

Reason

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

The manufacturer reported findings of missing primer on the internal of the elevator and rudder of aircraft S/N 8200. The aircraft S/N 8200 was with RUAG for maintenance purposes. Investigation performed by RUAG showed that the paint removal procedure for the rudder and elevator was changed from a paint stripping with brush and scraper to a procedure where the parts were submerged in a tank filled with hot liquid stripper. The stripper is called TURCO 5669 from Henkel Surface Technologies. The stripping process is described in the Technical Process Bulletin No. 238799 dated 09/01/1999. This paint stripping process change was not communicated to and not approved by the TC-Holder.

Corrosion damage can occur through insufficient surface protection. Consequently, the MCAI requires a detailed visual inspection of the inner structure of the rudder and elevator for signs of corrosion, de-bonded primer (yellow-green), and any deviation of surface protection. If the inspection results show corrosion beyond the acceptable level or areas with de-bonded primer, the inspection results have to be reported to RUAG Aerospace Services GmbH for further decisions. If necessary, repair the affected parts in accordance with the applicable repair instruction obtained from RUAG Aerospace Services GmbH.

Actions and Compliance

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

(1) Within 2 months after July 17, 2009 (the effective date of this AD), do a detailed visual inspection on the inner structure of the rudder and elevator for signs of corrosion, de-bonded primer (yellow-green), and any other deviation of surface protection following RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270 (includes undated attachments 1 and 2 to SB–228–270 Rev. 1), Rev. No. 1, dated November 28, 2008.

(2) If you find corrosion or areas with de-bonded primer as a result of the inspection required by paragraph (f)(1) of this AD, before further flight, do the following:

(i) Report the inspection results to RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Federal Republic of Germany, telephone: +49 (0) 8153–30–2280; fax: +49 (0) 8153–30–3030 and request FAA-approved repair instructions following RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270 (includes undated attachments 1 and 2 to SB–228–270 Rev. 1), Rev. No. 1, dated November 28, 2008.

(ii) Repair corrosion following FAA-approved repair instructions obtained from RUAG Aerospace Services GmbH.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI German AD D–2007–350R1, dated January 30, 2009; and RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270 (includes undated attachments 1 and 2 to SB–228–270 Rev. 1), Rev. No. 1, dated November 28, 2008, for related information.

Material Incorporated by Reference

(i) You must use RUAG Aerospace Defence Technology Dornier 228 Service Bulletin No. SB–228–270 (includes undated attachments 1 and 2 to SB–228–270 Rev. 1), Rev. No. 1, dated November 28, 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 RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Federal Republic of Germany, telephone: +49 (0) 8153–30–2280; fax: +49 (0) 8153–30–3030; E-mail: *custsupport.dornier228@ruag.com;* Internet: *http://www.ruag.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 June 4, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13693 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0523; Directorate Identifier 2009–NM–018–AD; Amendment 39–15934; AD 2009–12–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340–541 and –642 Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new 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:

Following a refined Finite Element Model (FEM) analysis of the Nose Landing Gear (NLG) actuator fitting installed on the roof panel of the NLG box of all A340–500/–600 aircraft, it has been demonstrated that potential fatigue cracks can be initiated on the NLG actuator fitting flanges.

This situation, if not corrected, could lead to inadvertent extension of the NLG which could adversely affect the aircraft's continued safe flight or [could result in] failure to retract the NLG which, in combination with an engine failure, could adversely affect the aircraft's safe take off.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective June 29, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 29, 2009.

We must receive comments on this AD by July 13, 2009.

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

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

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0201, dated November 13, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> Following a refined Finite Element Model (FEM) analysis of the Nose Landing Gear (NLG) actuator fitting installed on the roof panel of the NLG box of all A340–500/–600 aircraft, it has been demonstrated that potential fatigue cracks can be initiated on the NLG actuator fitting flanges.
>
> This situation, if not corrected, could lead to inadvertent extension of the NLG which could adversely affect the aircraft's continued safe flight or [could result in] failure to retract the NLG which, in combination with an engine failure, could adversely affect the aircraft's safe take off.
>
> To prevent such event, this Airworthiness Directive requires High Frequency Eddy Current (HFEC) inspections and detailed visual inspections on the NLG Actuator fitting to detect any crack and, in case of finding, mandates the relevant corrective actions.

Corrective actions include contacting Airbus for repair instructions and doing the repair. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A340–53–5045, including Appendix 01, dated October 6, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0523; Directorate Identifier 2009–NM–018–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

We 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.

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:

2009–12–11 Airbus: Amendment 39–15934. Docket No. FAA–2009–0523; Directorate Identifier 2009–NM–018–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 29, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A340–541 and –642 airplanes, certificated in any category.

Subject

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

Reason

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

Following a refined Finite Element Model (FEM) analysis of the Nose Landing Gear (NLG) actuator fitting installed on the roof panel of the NLG box of all A340–500/–600 aircraft, it has been demonstrated that potential fatigue cracks can be initiated on the NLG actuator fitting flanges.

This situation, if not corrected, could lead to inadvertent extension of the NLG which could adversely affect the aircraft's continued safe flight or [could result in] failure to retract the NLG which, in combination with an engine failure, could adversely affect the aircraft's safe take off.

To prevent such event, this Airworthiness Directive requires High Frequency Eddy Current (HFEC) inspections and detailed visual inspections on the NLG Actuator fitting to detect any crack and, in case of finding, mandates the relevant corrective actions.

The corrective action includes contacting Airbus for repair instructions and doing the repair.

Actions and Compliance

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

(1) At the applicable time defined in paragraph (f)(1)(i) or (f)(1)(ii) of this AD: Perform an HFEC inspection on fitting flanges and a detailed visual inspection of the NLG actuator overall fitting, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–53–5045, dated October 6, 2008.

(i) For weight variant 00x series: Before accumulating 3,920 total flight cycles or within 90 days of the effective date of this AD, whichever occurs later.

(ii) For weight variant 10x series: Before accumulating 3,020 total flight cycles or within 90 days of the effective date of this AD, whichever occurs later.

(2) If no crack is detected during both inspections required by paragraph (f)(1) of this AD, repeat the inspections thereafter at intervals not exceeding the interval defined in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, as applicable.

(i) For weight variant 00x series: 1,320 flight cycles.

(ii) For weight variant 10x series: 2,690 flight cycles.

(3) If any crack is detected during any inspection required by this AD, before further flight, contact Airbus for repair instructions and do the repair.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2008–0201, dated November 13, 2008; and Airbus Mandatory Service Bulletin A340–53–5045, including Appendix 01, dated October 6, 2008; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A340–53–5045, including Appendix 01, dated October 6, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on June 2, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13572 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0524; Directorate Identifier 2009–NM–030–AD; Amendment 39–15935; AD 2009–12–12]

RIN 2120–AA64

Airworthiness Directives; ATR Model ATR42–500 and ATR72–212A Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new 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:

Identification of an unsafe condition related to the loss of the fail-safe design criteria for the rudder trim, pitch trim and stick pusher control functions after a reported event led in April 2008 to the release of AD 2008–0062 to mandate the ATR modification No. 05780.

It has appeared that some airplanes manufactured and delivered before April 1, 2008, may have received on the production-line a partial or incorrect implementation of the required ATR mod. No. 05780.

* * * * *

The unsafe condition is loss of the rudder trim, pitch trim, and stick pusher control, which could result in loss of control of the airplane. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective June 29, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications, listed in the AD as of June 29, 2009.

We must receive comments on this AD by July 13, 2009.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1139.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0218, dated December 10, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Identification of an unsafe condition related to the loss of the fail-safe design criteria for the rudder trim, pitch trim and stick pusher control functions after a reported event led in April 2008 to the release of AD 2008–0062 to mandate the ATR modification No. 05780.

It has appeared that some airplanes manufactured and delivered before April 1, 2008, may have received on the production-line a partial or incorrect implementation of the required ATR mod. No. 05780.

For the reasons stated above, the present AD requires an inspection of the identified airplanes to verify and, finalize when necessary, the complete and correct implementation of the ATR mod. No. 05780[.]

The unsafe condition is loss of the rudder trim, pitch trim, and stick pusher control, which could result in loss of control of the airplane. Correct implementation of ATR modification No. 05780 includes inspecting the protection sleeves for correct installation, and installing new protective sleeving on the wire bundles in the rear baggage zone if necessary; doing a detailed inspection for correct positioning of the clamps for the wire bundles, and re-installing them if necessary. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Avions de Transport Regional has issued Service Bulletins ATR42–92–0020 and ATR72–92–1021, both dated October 17, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We

invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0524; Directorate Identifier 2009–NM–030–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

We 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.

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:

2009–12–12 ATR—GIE Avions de Transport Régional (Formerly Aerospatiale): Amendment 39–15935. Docket No. FAA–2009–0524; Directorate Identifier 2009–NM–030–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 29, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of the AD, certificated in any category.

(1) ATR Model ATR42–500 airplanes, manufacturer serial numbers (MSNs) 667, 669, and 671.

(2) ATR Model ATR72–212A airplanes, MSNs 756 to 784 inclusive, except MSNs 770, 773, and 783.

Subject

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

Reason

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

Identification of an unsafe condition related to the loss of the fail-safe design criteria for the rudder trim, pitch trim and stick pusher control functions after a reported event led in April 2008 to the release of AD 2008–0062 to mandate the ATR modification No. 05780.

It has appeared that some airplanes manufactured and delivered before April 1, 2008, may have received on the production-line a partial or incorrect implementation of the required ATR mod. No. 05780.

For the reasons stated above, the present AD requires an inspection of the identified airplanes to verify and, finalize when necessary, the complete and correct implementation of the ATR mod. No. 05780[.]

The unsafe condition is loss of the rudder trim, pitch trim, and stick pusher control, which could result in loss of control of the airplane. Correct implementation of ATR modification No. 05780 includes inspecting the protection sleeves for correct installation, and installing new protective sleeving on the wire bundles in the rear baggage zone if necessary; doing a detailed inspection for correct positioning of the clamps for the wire bundles, and re-installing them if necessary.

Actions and Compliance

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

(1) Within 550 flight hours after the effective date of this AD, do a detailed inspection to verify the installation of the correct protection sleeves and the correct routing and clamping of the wire bundles. Do the actions in accordance with the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–92–0020 or ATR72–92–1021, both dated October 17, 2008; as applicable.

(2) If any discrepancy is found during the inspection required by paragraph (f)(1) of this AD, before further flight, do all applicable corrective actions in accordance with the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–92–0020 or ATR72–92–1021, both dated October 17, 2008; as applicable.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No Differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1139. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection

requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2008–0218, dated December 10, 2008; and Avions de Transport Regional Service Bulletins ATR42–92–0020 and ATR72–92–1021, both dated October 17, 2008; for related information.

Material Incorporated by Reference

(i) You must use Avions de Transport Regional Service Bulletin ATR42–92–0020, dated October 17, 2008; or Avions de Transport Regional Service Bulletin ATR72–92–1021, dated October 17, 2008; as applicable; 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 ATR–GIE Avions de Transport Régional, 1, Allée Pierre Nadot, 31712 Blagnac Cedex, France; telephone +33 (0) 5 62 21 62 21; fax +33 (0) 5 62 21 67 18; e-mail *continued.airworthiness@atr.fr;* Internet *http://www.aerochain.com.*

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

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

Issued in Renton, Washington, on June 2, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13573 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0226; Directorate Identifier 2007–SW–35–AD; Amendment 39–15930; AD 2009–12–07]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109E, A109S, A119, and AW119MKII Helicopters

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for Agusta S.p.A. (Agusta) Model A109E, A109S, A119, and AW119MKII helicopters. 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 European Aviation Safety Agency (EASA), the Technical Agent for the aviation authority of Italy, with which we have a bilateral agreement, has issued an MCAI AD which states that two cases of cracks on a certain cargo hook lever (lever) have been reported by the manufacturer of the cargo hook. This lever is a critical structural component of the cargo hook, and a crack could result in inadvertent loss of the cargo hook load. This AD requires actions that are intended to address the unsafe condition caused by cracks in the cargo hook lever.

DATES: This AD becomes effective on July 17, 2009.

The incorporation by reference of certain publications is approved by the Director of the Federal Register as of July 17, 2009.

ADDRESSES: You may examine the AD docket on the Internet at *http://regulations.gov* or in person at the Docket Operations office, U.S. Department of Transportation, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Agusta, Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, telephone 39 0331–229111, fax 39 0331–229605/222595, or at *http://customersupport.agusta.com/technical_advice.php.*

Examining the AD Docket: The AD docket contains the Notice of proposed rulemaking (NPRM), the economic evaluation, any comments received, and other information. The street address and operating hours for the Docket Operations office (telephone (800) 647–5527) are in the **ADDRESSES** section of this AD. Comments will be available in the AD docket shortly after they are received.

FOR FURTHER INFORMATION CONTACT: John Strasburger, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Policy Group, 2601 Meacham Blvd., Fort Worth, Texas 76137; telephone (817) 222–5167; fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Discussion

We issued an NPRM to amend 14 CFR part 39 to include an AD that would apply to the Agusta Model A109E, A109S, A119, and AW119MKII helicopters on March 4, 2009. That NPRM was published in the **Federal Register** on March 23, 2009 (74 FR 12096). That NPRM proposed to require actions that are intended to detect a crack in the cargo hook lever and prevent the inadvertent loss of the cargo hook load. You may obtain further information by examining the MCAI and any related service information in the AD docket.

Comments

By publishing the NPRM, we gave the public an opportunity to participate in developing this AD. However, we received no comment on the NPRM or on our determination of the cost to the public. Therefore, based on our review and evaluation of the available data, we have determined that air safety and the public interest require adopting the AD as proposed.

Relevant Service Information

Agusta has issued Alert Bollettino Tecnico (ABT) No. 109EP–78, ABT No. 109S–12, and ABT No. 119–21, all dated June 6, 2007. The actions described in the MCAI are intended to correct the same unsafe condition as that identified in the service information.

Differences Between This AD and the MCAI

We have reviewed the MCAI and, in general, agree with its substance. However, we have made the following changes:

- Excluded the August 31, 2007 compliance date because that date has passed;
- Excluded the Model A109LUH from the applicability and do not reference Agusta ABT No. 109L–006 because the Model A109LUH helicopter is not on the U.S. type certificate, H7EU;
- Added the Model AW119MKII to the applicability;
- Required the use of a 10-power or higher magnifying glass to accomplish the visual inspections; and
- Excluded the kit installation part number (P/N), relying instead on the cargo hook and lever P/N.

These differences are highlighted in the ''Differences Between this AD and the MCAI'' section in this AD.

Costs of Compliance

We estimate that this AD will affect about 26 helicopters on the U.S.

Registry with the cargo hook. We also estimate that it will take about 10 minutes to inspect each cargo hook for a crack, and about 1 work-hour to replace a cracked cargo hook. The average labor rate is $80 per work-hour. Required parts will cost about $3,677 per cargo hook. Based on these figures, we estimate the cost of this AD on U.S. operators to be $97,647 per year, assuming that each affected helicopter requires five inspections per week, and that two cargo hooks are replaced each year.

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 product(s) 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.

Therefore, 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 an economic evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

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:

2009–12–07 Agusta S.p.A.: Amendment 39–15930; Docket No. FAA–2009–0226; Directorate Identifier 2007–SW–35–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective on July 17, 2009.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Model A109E, A109S, A119, and AW119MKII helicopters with cargo hook, part number (P/N) 528–010–01, and cargo hook lever, P/N 232–028–00, installed, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states that two cases of cracks in the lever, P/N 232–028–00, have been reported by the manufacturer of the cargo hook. The lever is a component of the cargo hook, P/N 528–010–01. This lever is a critical structural component of the cargo hook, and a crack could result in inadvertent loss of the cargo hook load.

Actions and Compliance

(e) Before each cargo hook operation, visually inspect the cargo hook lever, P/N 232–028–00, for any crack. Use a 10-power or higher magnifying glass and inspect in the area depicted in Figures 1 and 2 of the following Agusta Alert Bollettino Tecnico (ABT), all dated June 6, 2007:

(1) ABT No. 109EP–78 for Model A109E helicopters;

(2) ABT No. 109S–12 for Model A109S helicopters; or

(3) ABT No. 119–21 for Model A119 helicopters.

(f) If a crack is found in the lever, do not use the cargo hook until the entire cargo hook is replaced with an airworthy cargo hook with an uncracked lever.

Differences Between This AD and the MCAI

(g) This AD differs from the MCAI AD in that we:

(1) Exclude the August 31, 2007 compliance date because that date has passed;

(2) Exclude the Model A109LUH from the applicability and do not reference Agusta ABT No. 109L–006 because the Model A109LUH helicopter is not on the U.S. type certificate, H7EU;

(3) Add the Model AW119MKII to the applicability;

(4) Require the use of a 10-power or higher magnifying glass to accomplish the visual inspections; and

(5) Exclude the kit installation P/N, relying instead on the cargo hook and lever P/N.

Other Information

(h) Alternative Methods of Compliance (AMOCs): The Manager, Safety Management Group, 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: John Strasburger, Aviation Safety Engineer, Regulations and Policy Group, Rotorcraft Directorate, FAA, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 222–5167; fax (817) 222–5961.

Related Information

(i) EASA Emergency AD No. 2007–0160–E, dated June 7, 2007, contains related information.

Air Transport Association of America (ATA) Tracking Code

(j) Air Transport Association of America (ATA) Code 2550: Cargo Compartments.

Material Incorporated by Reference

(k) You must use the specified portions of the service information identified in Table 1 to do the actions required.

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

(2) For service information identified in this AD, contact Agusta, Via Giovanni Agusta, 520 21017 Cascina Costa di Samarate (VA), Italy, telephone 39 0331–229111, fax 39 0331–229605/222595, or at *http://customersupport.agusta.com/technical_advice.php.*

(3) You may review copies at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Agusta Alert Bollettino Tecnico	Date	For helicopter model
No. 109EP–78	June 6, 2007	A109E

TABLE 1—MATERIAL INCORPORATED BY REFERENCE—Continued

Agusta Alert Bollettino Tecnico	Date	For helicopter model
No. 109S–12	June 6, 2007	A109S
No. 119–21	June 6, 2007	A119

Issued in Fort Worth, Texas on May 21, 2009.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–13566 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0484; Directorate Identifier 2008–SW–44–AD; Amendment 39–15924; AD 2009–12–01]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 47, 47B, 47B3, 47D, 47D1, 47E, 47G, 47G–2, 47G–2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Bell Helicopter Textron, Inc. (Bell) helicopters. This action requires visually inspecting each main rotor blade box beam clip (clip) for correct installation. This amendment is prompted by a report of a main rotor blade with an incorrectly installed clip. The actions specified in this AD are intended to prevent a main rotor blade spar crack as a result of an incorrectly installed clip, loss of a main rotor blade, and subsequent loss of control of the helicopter.

DATES: Effective June 29, 2009.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 29, 2009.

Comments for inclusion in the Rules Docket must be received on or before August 11, 2009.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

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

You may get the service information identified in this AD from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files/*.

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information 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 Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5170, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD for the specified Bell helicopters. This action requires visually inspecting each clip for correct installation. This amendment is prompted by a report of a main rotor blade with an incorrectly installed clip. This condition, if not corrected, could result in a main rotor blade spar crack, loss of a main rotor blade, and subsequent loss of control of the helicopter.

We have reviewed Bell Alert Service Bulletin No. 47–08–25, dated May 26, 2008 (ASB), which describes procedures for visually inspecting each clip on the affected main rotor blade for correct installation. The ASB specifies that a clip incorrectly installed may cause a main rotor blade spar crack.

This unsafe condition is likely to exist or develop on other helicopters of these same type designs. Therefore, this AD is being issued to prevent a main rotor blade spar crack as a result of an incorrectly installed clip, loss of a main rotor blade, and subsequent loss of control of the helicopter. This AD requires visually inspecting the entire length of each clip on an affected main rotor blade by following specified portions of the ASB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, visually inspecting each main rotor blade for an incorrectly installed clip within 10 hours time-in-service and replacing any main rotor blade that has an incorrectly installed clip with an airworthy main rotor blade before further flight is a very short time period, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

We estimate that this AD will affect 1,130 helicopters. It will require a minimal amount of time to locate the 7 affected blades. The visual inspection for an incorrectly installed clip will take about 5 work hours at an average labor rate of $80 per work hour. Required parts will cost about $42,640. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $45,440 ($2,800 for labor costs and $42,640 in parts costs) assuming only one blade will need to be replaced in the helicopter fleet.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2009–0484;

Directorate Identifier 2008–44–SW–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, pursuant to 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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2009–12–01 Bell Helicopter Textron, Inc.: Amendment 39–15924. Docket No. FAA–2009–15924; Directorate Identifier 2008–SW–44–AD.

Applicability: Model 47, 47B, 47B3, 47D, 47D1, 47E, 47G, 47G–2, 47G–2A, 47G–2A–1, 47G–3, 47G–3B, 47G–3B–1, 47G–3B–2, 47G–3B–2A, 47G–4, 47G–4A, 47G–5, 47G–5A, 47H–1, 47J, 47J–2, 47J–2A, and 47K helicopters with a main rotor blade, installed, with a part number (P/N) and serial number (S/N), listed as follows, certificated in any category:

Main rotor blade, P/N	With a S/N of
047–110–250–021	A–303, A–304, A–312, or A–316.
047–110–250–023	A–298, A–301, or A–305.

Compliance: Required as indicated, unless done previously.

To prevent a main rotor blade spar crack as a result of an incorrectly installed main rotor blade box beam clip (clip), loss of a main rotor blade, and subsequent loss of control of the helicopter, do the following:

(a) Within 10 hours time-in-service (TIS), visually inspect the entire length of each upper and lower clip of each main rotor blade from the main rotor blade tip to the root by following Part II of the Accomplishment Instructions, paragraphs 1. through 8., of Bell Helicopter Textron, Inc. Alert Service Bulletin No. 47–08–25, dated May 26, 2008 (ASB) and referring to the depictions in Figures 1 and 2 of the ASB and Figure 1 of this AD for correct installation.

Note: Figure 3 of the ASB depicts a clip installed incorrectly.

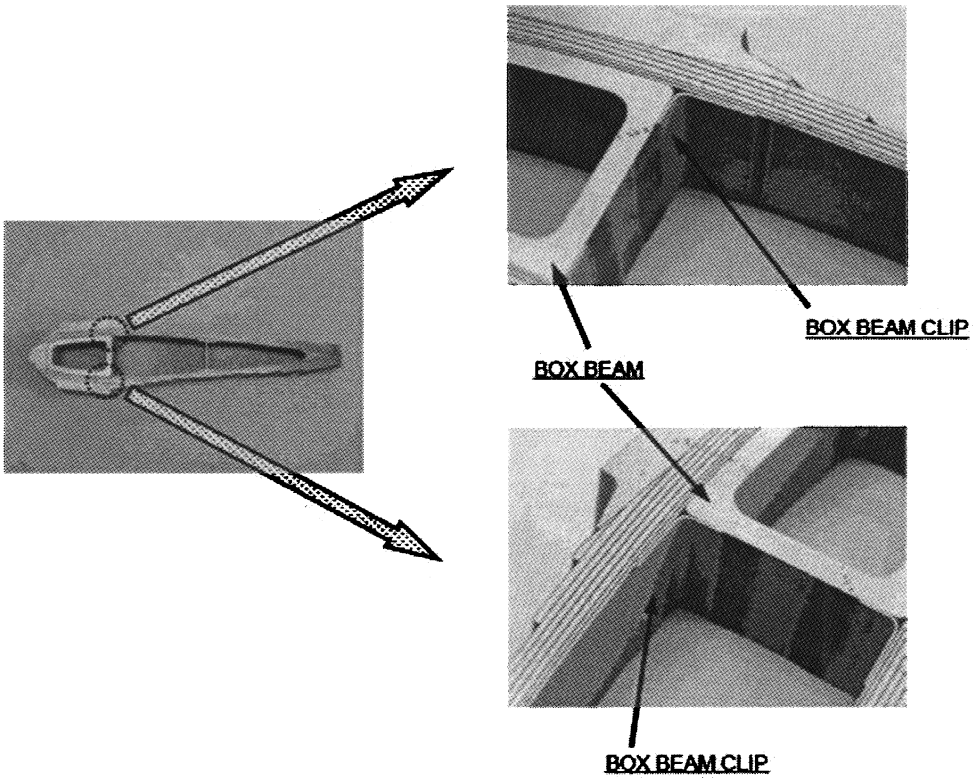

Figure 1 - Correct Installation of Clip for Box Beam

(b) Before further flight, if you find a main rotor blade with an incorrectly installed clip, replace that unairworthy main rotor blade with an airworthy main rotor blade that has a clip that is installed correctly.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Rotorcraft Certification Office, FAA, ATTN: Michael Kohner, Aviation Safety Engineer, Rotorcraft Directorate, Fort Worth, Texas 76193–0170, telephone (817) 222–5170, fax (817) 222–5783.

(d) Special flight permits may be issued under 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be done provided the onetime ferry flight does not exceed 5 hours TIS.

(e) The visual inspection shall be done by following the specified portions of Bell Helicopter Textron, Inc., Alert Service Bulletin No. 47–08–25, dated May 26, 2008. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, TX 76101, telephone (817) 280–3391, fax (817) 280–6466, or at *http://www.bellcustomer.com/files/*. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

(f) This amendment becomes effective on June 29, 2009.

Issued in Fort Worth, Texas, on May 19, 2009.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–13563 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0323 Directorate Identifier 2009–CE–012–AD; Amendment 39–15937; AD 2009–12–14]

RIN 2120–AA64

Airworthiness Directives; Aeromot-Industria Mecanico Metalurgica ltda. Model AMT–200 and AMT–300 Series Gliders

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

ACTION: Final rule.

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

It has been found that the coolant liquid EVANS NPG + is a flammable fluid. The engine liquid cooling system of the affected Aeromot aircrafts is not designed to operate with flammable liquids. Therefore, there is an unacceptable engine fire risk associated with the use of Evans NPG + fluid.

DATES: This AD becomes effective July 17, 2009.

On July 17, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

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 April 8, 2009 (74 FR 15894). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found that the coolant liquid EVANS NPG + is a flammable fluid. The engine liquid cooling system of the affected Aeromot aircrafts is not designed to operate with flammable liquids. Therefore, there is an unacceptable engine fire risk associated with the use of Evans NPG + fluid.

The MCAI requires replacement of the EVANS NPG + coolant liquid, application of new red lines on the engine cylinder head temperature gauge, replacement of the engine radiator cap, and insertion of information into the airplane flight manual (AFM). We are issuing this AD to require actions to correct the unsafe condition on these products.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect 55 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $30 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $6,050, or $110 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–12–14 Aeromot-Industria Mecanico Metalurgica ltda.: Amendment 39–15937; Docket No. FAA–2009–0323; Directorate Identifier 2009–CE–012–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 17, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all serial numbers of the following gliders that are certificated in any category:

(1) Model AMT–100 gliders as modified to Model AMT–200 gliders; and

(2) Models AMT–200, AMT–200S, and AMT–300 gliders.

Subject

(d) Air Transport Association of America (ATA) Code 73: Engine Fuel & Control.

Reason

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

It has been found that the coolant liquid EVANS NPG + is a flammable fluid. The engine liquid cooling system of the affected Aeromot aircrafts is not designed to operate with flammable liquids. Therefore, there is an unacceptable engine fire risk associated with the use of EVANS NPG + fluid.

Since this condition may occur in other aircraft of the same type and affects flight safety, an immediate corrective action is required. Thus, sufficient reason exists to request compliance with this AD in the indicated time limit without prior notice.

The MCAI requires replacement of the EVANS NPG + coolant liquid, application of new red lines on the engine cylinder head temperature gauge, replacement of the engine radiator cap, and insertion of information into the airplane flight manual (AFM).

Actions and Compliance

(f) Unless already done, do the following actions within the next 20 hours time-in-service after July 17, 2009 (the effective date of this AD) or within the next 30 days after July 17, 2009 (the effective date of this AD), whichever occurs first, following AEROMOT Alert Service Bulletin No. 200–71–106, Rev. B, dated December 20, 2006; ROTAX Aircraft Engines Mandatory Service Bulletin SB–912–043 R2/SB–914–029 R2, dated November 10, 2006; and ROTAX Aircraft Engines Service Instruction SI–912–016/SI–914–019, dated August 28, 2006:

(1) Replace the EVANS NPG + cooling liquid with a conventional, FAA-approved coolant for the ROTAX 912 and 914 series engines.

(2) Apply a new red line marking on the engine cylinder head temperature gauge at 120 degrees C/248 degrees F.

(3) Replace the radiator cap part number (P/N) 922075 from the affected engines with a new radiator cap P/N 922070.

(4) Insert into the AFM Limitations section an amendment to include the new operation limit of the cylinder head temperature to 120 degrees C/248 degrees F by inserting a copy of AEROMOT Alert Service Bulletin No. 200–71–106, Rev. B, dated December 20, 2006, into the AFM, Limitations section, Section 2 on item 2.4, power plant, fuel and oil limitations and item 2.5, power plant instrument markings.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Greg Davison, Glider Program Manager, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI ANAC Brazilian Airworthiness Directive AD No. 2007–01–01, dated January 29, 2007; AEROMOT Alert Service Bulletin No. 200–71–106, Rev. B, dated December 20, 2006; ROTAX Aircraft Engines Mandatory Service Bulletin SB–912–043 R2/SB–914–029 R2, dated November 10, 2006; and ROTAX Aircraft Engines Service Instruction SI–912–016/SI–914–019, dated August 28, 2006, for related information.

Material Incorporated by Reference

(i) You must use AEROMOT Alert Service Bulletin No. 200–71–106, Rev. B, dated December 20, 2006; ROTAX Aircraft Engines Mandatory Service Bulletin SB–912–043 R2/SB–914–029 R2, dated November 10, 2006; and ROTAX Aircraft Engines Service Instruction SI–912–016/SI–914–019, dated August 28, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Aeromot-Industria Mecanico Metalurgica ltda., Av. das Industrias, 1210–Bairro Anchieta, Caixa Postal 8031, 90 200–290–Porto Alegre-RS–Brazil; telephone: +55 51 3357 8550; fax: +55 51 3371 1655; Internet: *http://www.aeromot.com.br.*

(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 June 4, 2009.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13575 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

[Docket No. FDA–2009–N–0665]

New Animal Drugs for Use in Animal Feeds; Chlortetracycline

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 a supplemental new animal drug application (NADA) filed by Alpharma Inc. The supplemental NADA provides for revised Blue Bird labeling for chlortetracycline Type A medicated articles used to formulate Type B and Type C medicated feeds in various classes of livestock and poultry.

DATES: This rule is effective June 12, 2009.

FOR FURTHER INFORMATION CONTACT: Timothy Schell, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8116, e-mail: *timothy.schell@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Alpharma Inc., 440 Rte. 22, Bridgewater, NJ 08807, filed a supplement to NADA 46–699 that provides revised Blue Bird labeling for CHLORMAX (chlortetracycline) Type A medicated articles used to formulate Type B and Type C medicated feeds in various classes of livestock and poultry. The supplemental NADA is approved as of May 22, 2009, and the regulations are amended in § 558.128 (21 CFR 558.128) to reflect the approval.

In addition, § 558.128 is amended to differentiate certain withdrawal times in cattle for two chlortetracycline Type A medicated articles sponsored by Alpharma Inc. under separate NADAs and to correct the spelling of a turkey pathogen.

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 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 558

Animal drugs, Animal feeds.

■ 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 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 2. In § 558.128, in the table in paragraph (e)(2)(iii), in the ''Indications for use'' column, remove ''*meleagrides*'' and in its place add ''*meleagridis*''; and revise paragraphs (e)(4)(iv), (e)(4)(v), and (e)(4)(ix) to read as follows:

§ 558.128 Chlortetracycline.

* * * * *

(e) * * *

(4) * * *

Chlortetracycline amount	Indications for use	Limitations	Sponsor
* *	* *	* *	*
(iv) 10 mg/lb of body weight daily	1. Calves, beef and nonlactating dairy cattle; treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* organisms susceptible to chlortetracycline.	Feed approximately 400 g/ton, varying with body weight and feed consumption to provide 10 mg/lb per day. Treat for not more than 5 d; in feed including milk replacers; withdraw 10 d prior to slaughter. To sponsor No. 048164: zero withdrawal time. See paragraph (d)(1) of this section.	012286, 048164, 066104.
	2. Calves (up to 250 lb): For the treatment of bacterial enteritis caused by *E. coli* susceptible to chlortetracycline.	See paragraph (d)(1) of this section.	012286, 046573, 048164, 066104.
(v) 500 to 4,000 g/ton	Calves, beef and nonlactating dairy cattle; treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* organisms susceptible to chlortetracycline.	Feed continuously for not more than 5 days to provide 10 mg/lb body weight per day. To sponsor No. 046573 under NADA 046–699: 24-h withdrawal time. To sponsor No. 046573 under NADA 048–761: zero withdrawal time.	046573.
* *	* *	* *	*
(ix) 350 mg/head/day	1. Beef cattle: For control of bacterial pneumonia associated with shipping fever complex caused by *Pasteurella* spp. susceptible to chlortetracycline.	Withdraw 48 h prior to slaughter. To sponsor No. 046573 under NADA 046–699: 48-h withdrawal time. To sponsor No. 046573 under NADA 048–761 and No. 048164: zero withdrawal time.	012286, 046573, 048164, 066104.
	2. Beef cattle (under 700 lb): For control of active infection of anaplasmosis caused by *A. marginale* susceptible to chlortetracycline.	Withdraw 48 h prior to slaughter. To sponsor No. 046573 under NADA 046–699: 48-h withdrawal time. To sponsor No. 046573 under NADA 048–761 and No. 048164: zero withdrawal time.	012286, 046573, 048164, 066104.

* * * * *

Dated: June 8, 2009.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. E9–13849 Filed 6–11–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9453]

RIN 1545–BI81

Guidance Under Section 7874 Regarding Surrogate Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 7874 of the Internal Revenue Code (Code) concerning the determination of whether a foreign corporation shall be treated as a surrogate foreign corporation. The temporary regulations primarily affect domestic corporations or partnerships (and certain parties related thereto), and certain foreign corporations that acquire substantially all of the properties of such domestic corporations or partnerships. The text of these temporary regulations serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject also published in this issue of the **Federal Register**.

DATES: *Effective Dates:* The regulations are effective on June 12, 2009.

Applicability Date: For dates of applicability, see §§ 1.7874–1T(g) and 1.7874–2T(o).

FOR FURTHER INFORMATION CONTACT: S. James Hawes, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A foreign corporation is generally treated as a surrogate foreign corporation under section 7874(a)(2)(B) if pursuant to a plan (or a series of related transactions) three conditions are satisfied. First, the foreign corporation completes after March 4, 2003, the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation. Second, after the acquisition at least 60 percent of the stock (by vote or value) of the foreign corporation is held by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation. Third, after the acquisition the expanded affiliated group (defined in section 7874(c)(1)) that includes the foreign corporation does not have substantial business activities in the foreign country in which, or under the law of which, the foreign corporation is created or organized, when compared to the total business activities of the expanded affiliated group. Similar provisions apply to transactions involving the acquisition by a foreign corporation of substantially all of the properties constituting a trade or business of a domestic partnership. The level of ownership in the surrogate foreign corporation by former shareholders of the domestic corporation (or former partners in the domestic partnership) determines the treatment of the transaction. Compare sections 7874(a)(1) and 7874(b).

Temporary regulations (TD 9265) were published in the **Federal Register** (71 FR 32437) on June 6, 2006, concerning the treatment of a foreign corporation as a surrogate foreign corporation (2006 temporary regulations). A notice of proposed rulemaking (REG–112994–06) cross-referencing the temporary regulations was published in the same issue of the **Federal Register** (71 FR 32495). On July 28, 2006, Notice 2006–70 (2006–2 CB 252), (see § 601.601(d)(2)(ii)(*b*)) was published, announcing that the effective date in § 1.7874–2T(j) would be amended for certain acquisitions initiated prior to December 28, 2005. No public hearing was requested or held; however, comments were received. After consideration of the comments, the 2006 temporary regulations and the related notice of proposed rulemaking are withdrawn and replaced with new temporary regulations and a new notice of proposed rulemaking. These new temporary regulations are discussed in this preamble.

Summary of Temporary Regulations

A. Stock Held by a Partnership

Section 1.7874–1T(b), as contained in 26 CFR part 1 revised as of April 1, 2008, provided that, for purposes of section 7874(c)(2)(A), stock held by a partnership shall be considered as held proportionately by the partners of the partnership. Final regulations published in the **Federal Register** (73 FR 29054–29058) on May 20, 2008 (2008 final regulations) modified this provision to apply for all purposes of section 7874. See § 1.7874–1(e). By its terms, § 1.7874–1(e) applies only to stock held by a partnership, not to all properties held by the partnership.

Commentators have questioned the scope of § 1.7874–1(e). In response to these comments, the temporary regulations modify the rule to apply only for purposes of determining whether the ownership condition of section 7874(a)(2)(B)(ii) is satisfied. The temporary regulations provide other partnership look-through rules, as appropriate. See, for example, the discussion in section F.4. of this preamble concerning the partnership items that are taken into account for purposes of section 7874(a)(2)(B)(iii).

B. Indirect Acquisition of Properties

1. Clarification of Temporary Regulations

The 2006 temporary regulations identify certain acquisitions that constitute indirect acquisitions of properties held by a domestic corporation. See § 1.7874–2T(b). The temporary regulations retain these rules and clarify that the identified transactions do not represent an exclusive list of transactions that constitute indirect acquisitions. The temporary regulations also clarify that the acquisition of an interest in a partnership is an indirect acquisition of a proportionate amount of the properties of the partnership for purposes of section 7874(a)(2)(B)(i).

2. Certain Acquisitions by Members of the Expanded Affiliated Group

The 2006 temporary regulations provide that if a corporation (acquiring corporation) acquires stock or assets of a domestic corporation in exchange for stock of a foreign corporation (foreign issuing corporation) that directly or indirectly owns more than 50 percent of the stock (by vote or value) of the acquiring corporation after the acquisition, the foreign issuing corporation shall be treated as acquiring a proportionate amount of the stock or assets of the domestic corporation. § 1.7874–2T(b)(4).

The temporary regulations retain this rule, with modifications. First, the rule is modified to apply if the acquiring corporation and the foreign issuing corporation are members of the same expanded affiliated group after the acquisition. Second, the rule is modified to apply to an acquisition of properties of a partnership. Finally, the rule is modified to apply if a partnership acquires properties of a domestic corporation (or partnership) in exchange for stock of a foreign issuing corporation, but only if the foreign issuing corporation and the partnership would be members of the same expanded affiliated group after the acquisition if the partnership were a corporation.

C. Acquisitions by Multiple Foreign Corporations

The IRS and the Treasury Department have become aware of transactions intended to avoid section 7874 that involve two or more foreign corporations completing, in the aggregate, an acquisition described in section 7874(a)(2)(B)(i). For example, pursuant to a plan (or a series of related transactions), two foreign corporations would collectively acquire substantially all of the properties held by a domestic corporation. Taxpayers may take the position that neither foreign corporation is a surrogate foreign corporation because no foreign corporation separately acquires substantially all of the properties held by the domestic corporation. Taxpayers may also take the position that section 7874(c)(4) does not apply to these transactions.

Even if substantially all of the properties held by a domestic corporation (or constituting a trade or business of a domestic partnership) are not acquired by a single foreign corporation, this type of transaction presents the policy concerns that prompted the enactment of section 7874. Accordingly, the temporary regulations provide that, if pursuant to a plan (or a series of related transactions) two or more foreign corporations complete, in the aggregate, an acquisition described in section 7874(a)(2)(B)(i), then each foreign corporation shall be treated as completing the acquisition for purposes of determining whether such foreign corporation shall be treated as a surrogate foreign corporation. See also section 7874(c)(4).

D. Acquisition of Multiple Domestic Corporations (or Partnerships)

The preamble to the 2008 final regulations identifies another transaction intended to avoid section 7874 that involves a single foreign corporation completing more than one acquisition described in section 7874(a)(2)(B)(i) as part of the same plan (or a series of related transactions). The preamble to the 2008 final regulations explains that the IRS and the Treasury Department disagree with the characterization of this type of transaction for purposes of section 7874 under current law and are considering issuing regulations clarifying the application of section 7874 to such transactions. In particular, the IRS and the Treasury Department disagree with the position that in determining whether the foreign corporation is a surrogate foreign corporation the ownership percentage under section 7874(a)(2)(B)(ii) is determined separately with respect to each domestic corporation (or partnership).

The preamble to the 2008 final regulations explains that any regulations issued would clarify that references in section 7874(a)(2)(B) to ''a domestic corporation'' shall, as appropriate, mean ''one or more domestic corporations'' where the properties of more than one domestic corporation are, directly or indirectly, acquired by a foreign corporation pursuant to the same plan. See § 1.368–2(h). The preamble indicates that similar clarifications would be made for transactions involving domestic partnerships.

The temporary regulations clarify that if a foreign corporation completes more than one acquisition described in section 7874(a)(2)(B)(i) pursuant to a plan (or a series of related transactions), then, for purposes of section 7874(a)(2)(B)(ii), the acquisitions shall be treated as a single acquisition and the domestic corporations (and/or domestic partnerships) shall be treated as a single entity. This rule shall apply equally to transactions involving multiple corporations, multiple partnerships, or multiple corporations and partnerships.

The IRS and the Treasury Department determined that providing a specific operative rule was preferable to simply stating that, for purposes of section 7874(a)(2)(B), any reference to a single domestic corporation (or partnership) includes one or more domestic corporations (or partnerships). However, the operative rule of the temporary regulations is not a change from current law.

E. ''By Reason of'' Standard of Section 7874(a)(2)(B)(ii)

1. Distributions and Other Transactions

The 2006 temporary regulations provide that stock of a foreign corporation received by a former shareholder of a domestic corporation in exchange for stock of the domestic corporation is held by reason of holding stock in the domestic corporation. § 1.7874–2T(c)(1). Commentators have questioned whether an exchange is the exclusive means by which stock of a foreign corporation can be held by reason of holding stock in the domestic corporation. For example, one commentator questioned whether stock of a foreign corporation received by a former shareholder as a distribution with respect to the stock of the domestic corporation is held by reason of holding stock in the domestic corporation.

Section 7874(a)(2)(B)(ii) does not require stock of the foreign corporation to be received in exchange for stock of the domestic corporation (or an interest in the domestic partnership). Therefore, the temporary regulations clarify that the ''by reason of'' condition of section 7874(a)(2)(B)(ii) is satisfied if stock of a foreign corporation is received in exchange for, or with respect to, stock in a domestic corporation (or an interest in a domestic partnership). This includes a taxable or nontaxable distribution. The temporary regulations also clarify that the ''by reason of'' condition may be satisfied other than through exchanges or distributions.

2. Acquisitions Involving Other Property

One commentator questioned whether all the stock of a foreign corporation received by a former shareholder in exchange for stock of a domestic corporation and other property could be treated as held by reason of holding stock of the domestic corporation, if the other property bears some relationship to the stock of the domestic corporation.

In response to this comment, the temporary regulations clarify that, subject to section 7874(c)(4) and general tax principles, the ''by reason of'' standard applies based on the amount of stock of the foreign corporation received in exchange for, or with respect to, the stock of the domestic corporation (or interest in the domestic partnership). This determination is based on the relative values of the stock of the domestic corporation (or interest in a domestic partnership) and any other property exchanged for the stock of the foreign corporation. Thus, subject to section 7874(c)(4) and general tax principles, the ''by reason of'' standard is not affected by a relationship between stock of the domestic corporation (or interest in the domestic partnership) and such other property.

F. Substantial Business Activities Condition of Section 7874(a)(2)(B)(iii)

1. Removal of Safe Harbor and Examples

The third condition for the treatment of a foreign corporation as a surrogate foreign corporation is that, after the acquisition, the expanded affiliated group (defined in section 7874(c)(1)) that includes the foreign corporation does not have substantial business activities in the foreign country in which, or under the law of which, the foreign corporation is created or organized, when compared to the total business activities of the expanded affiliated group (the substantial business activities condition). Section 7874(a)(2)(B)(iii). For purposes of determining whether the substantial business activities condition is satisfied, the 2006 temporary regulations provide a general rule that, with certain exceptions, is based on all the facts and circumstances, and a safe harbor. § 1.7874–2T(d)(1) through (3). The 2006 temporary regulations also provide examples illustrating the application of the general rule. § 1.7874–2T(d)(4).

The IRS and the Treasury Department have concluded that the safe harbor provided by the 2006 temporary regulations may apply to certain transactions that are inconsistent with the purposes of section 7874, which is meant to prevent certain transactions that seek to avoid U.S. tax by merely shifting the place of organization of a domestic corporation (or partnership). The temporary regulations, therefore, do not retain the safe harbor provided by the 2006 temporary regulations. The temporary regulations also do not retain the examples illustrating the general rule contained in the 2006 temporary regulations. Thus, taxpayers can no longer rely on the safe harbor or the examples illustrating the general rule provided by the 2006 temporary regulations. Instead, taxpayers must apply the general rule to determine whether the substantial business activities condition is satisfied. In addition, the question of whether the substantial business activities condition is satisfied will continue to be on the list of provisions with respect to which the IRS will not ordinarily issue rulings or determination letters. See Rev. Proc. 2009–7 (2009–1 IRB 226), Section 4.01(30). Comments are requested with respect to these changes.

2. Sales and Services Between Expanded Affiliated Group Members

The 2006 temporary regulations identify sales made by the expanded affiliated group to customers located in the foreign country as an item to consider in determining whether the substantial business activities condition is satisfied. § 1.7874–2T(d)(1)(ii)(*3*). Commentators have asked whether sales (or the performance of services) between expanded affiliated group members may be taken into account for this purpose.

The IRS and the Treasury Department are concerned that sales (and the performance of services) between expanded affiliated group members can be structured in a manner that does not represent actual business activities. However, subject to section 7874(c)(4) and general tax principles, the IRS and the Treasury Department believe that in appropriate circumstances sales (or the performance of services) between members of the expanded affiliated group may be taken into account under the general rule.

3. Items Not To Be Considered

The 2006 temporary regulations identify certain assets, activities, or income not to be taken into account in determining whether the substantial business activities condition is satisfied. See § 1.7874–2T(d)(1)(iii). See also section 7874(c)(4). The temporary regulations add to these items any assets, business activities, or employees located in the foreign country in which, or under the law of which, the foreign acquiring corporation is created or organized if such assets, business activities or employees are transferred to another country pursuant to a plan in existence at the time of the acquisition.

4. Partnership Items

The 2006 temporary regulations provide that if one or more members of the expanded affiliated group own capital or profits interests in a partnership, the proportionate amount of certain items of the partnership are considered to be items of the member (or members) of the expanded affiliated group. § 1.7874–2T(d)(3)(iv).

The temporary regulations retain and modify this provision to provide that, for purposes of the substantial business activities condition, a member of the expanded affiliated group that holds at least a 10 percent capital and profits interest in a partnership shall take into account its proportionate share of the items of the partnership, including business activities, employees, assets, income, and sales.

G. Publicly Traded Foreign Partnerships

1. Scope

For purposes of section 7874, the 2006 temporary regulations treat as a foreign corporation any foreign partnership that would, but for section 7704(c), be treated as a corporation under section 7704 at any time during the two-year period following the completion by the foreign partnership of an acquisition described in section 7874(a)(2)(B)(i). The IRS and the Treasury Department are concerned that taxpayers may be taking the position that the rule does not apply to a foreign partnership whose interests become publicly traded outside this two-year period, even if the public trading occurs pursuant to a plan that existed at the time of the acquisition.

To address these transactions, the temporary regulations modify the rule to apply to any foreign partnership that would, but for section 7704(c), be treated as a corporation under section 7704(a) at the time of the acquisition described in section 7874(a)(2)(B)(i), or at any time after the acquisition pursuant to a plan that existed at the time of the acquisition. For this purpose, a plan shall be deemed to exist at the time of the acquisition if the foreign partnership would, but for section 7704(c), be treated as a corporation under section 7704(a) at any time during the two-year period following the acquisition.

The temporary regulations also clarify that a publicly traded foreign partnership treated as foreign corporation under the rule is treated as a foreign corporation for all purposes of section 7874.

2. Implication Regarding Scope of Public Offering Rule

Section 1.7874–2T(e)(5), *Example 3,* involves a publicly traded foreign partnership that is treated as a surrogate foreign corporation under section 7874(a)(2)(B), but not as a domestic corporation under section 7874(b). In the example, the publicly traded foreign partnership acquires the stock of a domestic corporation in exchange for 75 percent of its outstanding interests. At the same time as the acquisition, an unrelated person acquires the remaining 25 percent interest in exchange for stock of a foreign corporation. The example concludes that the former shareholders of the domestic corporation hold 75 percent of the interests in the publicly traded foreign partnership by reason of holding stock of the domestic corporation. Implicit in this conclusion is that the 25 percent interest received by the unrelated person in exchange for the stock of the foreign corporation is not subject to the public offering rule of section 7874(c)(2)(B).

The IRS and the Treasury Department did not intend for this example to address the scope or application of the public offering rule of section 7874(c)(2)(B). The temporary regulations modify the example to eliminate the implication. The IRS and the Treasury Department are considering issuing guidance concerning the public offering rule of section 7874(c)(2)(B). Comments are requested in this regard.

H. Options and Similar Interests

The 2006 temporary regulations provide that, for purposes of section 7874(a)(2)(B)(ii), options and interests that are similar to options held by reason of holding stock in a domestic corporation (or an interest in a domestic partnership) shall be treated as exercised. Not addressed by the 2006 temporary regulations, however, is the treatment of options (or similar interests) or stock in a foreign corporation held by reason of holding options (or similar interests) in a domestic corporation (or a partnership, domestic or foreign). This issue may arise, for example, if the holder of a warrant to acquire stock of the domestic corporation exchanges the warrant for a warrant to acquire stock of the foreign acquiring corporation. The 2006 regulations also do not address the treatment of options (or similar interests) in a foreign corporation not held by reason of holding stock in a domestic corporation (or an interest in a domestic partnership). Further, the IRS and the Treasury Department believe that treating options (or similar interests) as exercised may, in certain cases, lead to inappropriate results. For example, treating options (or similar interests) as exercised may distort the ownership of the foreign corporation for purposes of section 7874(a)(2)(B)(ii). For these reasons, the temporary regulations make the following changes to the rule provided by the 2006 temporary regulations.

1. Domestic Corporations (or Partnerships)

An option (or similar interest) represents a claim on equity to the extent the value of the stock (or partnership interest) that may be acquired pursuant to the option (or similar interest) exceeds the exercise price under the terms of the option (or similar interest). As a result, the temporary regulations provide that, for purposes of section 7874, an option (or similar interest) in a domestic corporation (or a partnership, domestic

or foreign) shall be treated as stock of the domestic corporation (or an interest in the partnership) with a value equal to the holder's claim on the equity of the domestic corporation (or partnership) immediately before the acquisition described in section 7874(a)(2)(B)(i). For this purpose, the equity of the domestic corporation (or partnership) shall not include the value of any property the holder of the option (or similar interest) would be required to provide to the domestic corporation (or partnership) pursuant to the terms of the option (or similar interest) if such option (or similar interest) were exercised. Pursuant to these rules, for example, if the holder of an option in a domestic corporation receives stock of a foreign corporation by reason of holding the option, the holder shall be treated as holding the stock of the foreign corporation by reason of holding stock in the domestic corporation.

2. Foreign Corporations

The temporary regulations further provide that an option (or similar interest) in a foreign corporation shall generally be treated as stock of the foreign corporation with a value equal to the holder's claim on the equity of the foreign corporation immediately after the acquisition described in section 7874(a)(2)(B)(i). As is the case for options (and similar interests) with respect to domestic corporations (or partnerships), for this purpose the equity of the foreign corporation shall not include the value of any property the holder of the option (or similar interest) would be required to provide to the foreign corporation pursuant to the terms of the option (or similar interest) if such option (or similar interest) were exercised. This rule shall not apply, however, if a principal purpose of the issuance or acquisition of an option (or similar interest) is to avoid the foreign corporation being treated as a surrogate foreign corporation.

3. Multiple Claims on Equity

The rules of the temporary regulations concerning options (or similar interests) shall not apply to the extent treating an option (or similar interest) as stock of a corporation (or an interest in a partnership) would duplicate, in whole or in part, a shareholder's (or partner's) claim on the equity of the corporation (or partnership). However, except to the extent otherwise provided in section 7874, stock of a corporation held by a shareholder, or an interest in a partnership held by a partner, shall in all cases be taken into account for purposes of section 7874.

4. Comments

The IRS and the Treasury Department request comments on the rules provided by the temporary regulations concerning options (or similar interests). For example, comments are requested as to whether the rules should not apply to certain options, such as publicly traded options or compensatory options. Comments are also requested on the general approach of the rules, which treats the option (or similar interest) as stock or a partnership interest to the extent of the holder's claim on equity, as compared to an approach that would deem the options (or similar interests) as exercised. Any comments should consider the potential impact of treating options (or similar interests) as exercised on the determination of ownership in the foreign corporation under section 7874(a)(2)(B)(ii).

I. Economically Equivalent Interests

The IRS and the Treasury Department have become aware of transactions intended to avoid section 7874 by using interests (such as stock or partnership interests) that, although not in form exchangeable or convertible into stock of a foreign corporation, are structured to be substantially equivalent to an equity interest in the foreign corporation. In one such transaction, for example, a privately held domestic corporation (UST) intends to make an initial public offering of its stock for cash. The UST shareholders, however, would prefer a foreign corporation to be the publicly-traded corporation.

To accomplish these objectives the following transactions are completed. A newly formed foreign corporation (FC) issues shares to the public in exchange for cash and then contributes all or part of the cash to a newly-formed domestic corporation (S) in exchange for all the stock of S. S then merges with and into UST. Pursuant to the merger agreement, the UST shareholders exchange their UST stock for a new class of UST stock (class B stock) and cash. FC exchanges its S stock for all of the remaining class of stock of UST (class A stock). FC holds few assets other than the class A stock.

The class B stock entitles the UST shareholders to dividend distributions approximately equal to any dividend distributions made by FC with respect to its publicly traded stock. The class B stock also permits the UST shareholders, in certain cases, to require UST to redeem the class B stock at fair market value. The class B stock does not provide the holder voting rights with respect to FC.

Because FC holds few assets other than the class A stock of UST, the value of the class B stock held by the former UST shareholders is approximately equal the value of a corresponding amount of FC stock. Further, the distribution and liquidity rights provided by the class B stock are intended to place the former UST shareholders in the same approximate economic position as if they had received publicly traded FC stock instead of the class B stock in the merger. Nonetheless, the former UST shareholders may take the position that they hold UST stock (and not FC stock) by reason of holding, in form, stock in UST and that the 2006 temporary regulations do not treat the class B stock as FC stock. For example, the former UST shareholders may take the position that the class B stock is not, in substance, an instrument other than debt that is convertible into stock of FC. See § 1.7874–2T(f)(2). The former UST shareholders may further take the position that section 7874(c)(4) does not apply to the transaction. If these positions are correct, FC would not be treated as a surrogate foreign corporation. The IRS and the Treasury Department understand that similar transactions may be structured using a partnership.

The IRS and the Treasury Department believe these transactions are contrary to the policies underlying section 7874. Therefore, the temporary regulations provide that, for purposes of section 7874, any interest (including stock or a partnership interest) that is not otherwise treated as stock of a foreign corporation (including under the rules concerning options (or similar interests)) shall be treated as stock of the foreign corporation if the following two conditions are satisfied: (1) The interest entitles the holder to distribution rights that are substantially similar in all material respects to the distribution rights entitled to a shareholder of the foreign corporation by reason of holding stock in the foreign corporation; and (2) treating the interest as stock of the foreign corporation has the effect of treating the foreign corporation as a surrogate foreign corporation. For purposes of the first condition, distribution rights include rights to dividend distributions (or partnership distributions), distributions in redemption of the interest (in whole or in part), distributions in liquidation, or other similar distributions that represent a return on, or of, the holder's investment in the interest.

J. Insolvent Entities

The preamble to the 2008 final regulations describes a transaction involving an insolvent domestic

corporation in which the creditors of the corporation claim not to be shareholders of the corporation for purposes of determining whether a foreign corporation that acquires substantially all of the properties held by the domestic corporation is treated as a surrogate foreign corporation. As further stated in the preamble, the IRS and the Treasury Department disagree with this interpretation under current law. See, for example, *Helvering* v. *Alabama Asphaltic Limestone Co.*, 315 U.S. 179 (1942), and § 1.368–1(e)(6).

The temporary regulations clarify that, for purposes of section 7874, if immediately prior to the first date properties are acquired as part of an acquisition described in section 7874(a)(2)(B)(i), a domestic corporation is in a title 11 or similar case (as defined in section 368(a)(3)), or the liabilities of the domestic corporation exceed the value of its assets, then any claim by a creditor against the domestic corporation shall be treated as stock of the domestic corporation. Therefore, any stock of a foreign corporation held by a creditor of the domestic corporation by reason of its claim against the domestic corporation would be considered held by a former shareholder of the domestic corporation by reason of holding stock in the domestic corporation.

A similar rule applies with respect to a domestic or foreign partnership. Foreign partnerships are included in this rule because, for purposes of section 7874(a)(2)(B)(ii), the acquisition of an interest in a foreign partnership that owns stock of a domestic corporation is considered an acquisition of a proportionate amount of the stock of domestic corporation. Therefore, if a foreign corporation acquired a sufficient interest in that foreign partnership, the foreign corporation could be treated as a surrogate foreign corporation.

One commentator requested the regulations clarifying the treatment of creditors for purposes of section 7874 make clear that a creditor that is treated as a shareholder of a domestic corporation is treated as a shareholder for all purposes of section 7874. In particular, the commentator requested the regulations make clear that the provisions of the 2008 final regulations concerning the determination of the stock of a foreign corporation held by reason of holding stock of the domestic corporation apply equally to such a creditor. The IRS and the Treasury Department agree with this comment. Accordingly, the temporary regulations clarify that a creditor that is treated as a shareholder of a domestic corporation (or as a partner in a partnership) is treated as a shareholder (or partner) for all purposes of section 7874. Thus, for example, subject to section 7874(c)(4) and general tax principles, stock of the foreign corporation received by a creditor in exchange for other property would not be taken into account in determining former shareholder (or former partner) ownership under section 7874(a)(2)(B)(ii).

K. Modification to Internal Restructuring Exception of 2008 Final Regulations

The IRS and the Treasury Department have become aware of divisive transactions involving an acquisition described in section 7874(a)(2)(B)(i) in which the ownership condition of section 7874(a)(2)(B)(ii) may not be satisfied by reason of the internal group restructuring exception provided by § 1.7874–1(c)(2). For example, assume that a publicly-traded domestic corporation (USP) wholly owns a domestic subsidiary (S1) that in turn wholly owns another domestic subsidiary (S2). The S2 stock does not represent substantially all of the properties of S1. Pursuant to a plan, S2 transfers substantially all of its properties to a newly formed foreign corporation (F1) in exchange for F1 stock and then distributes the F1 stock to S1. Pursuant to the same plan, S1 distributes the F1 stock to USP, and USP then distributes the F1 stock to its shareholders.

The acquisition by F1 of substantially all of the properties held by S2 is described in section 7874(a)(2)(B)(i). In addition, S1, the former shareholder of S2, holds all the F1 stock by reason of holding S2 stock. However, taxpayer may take the position that the condition of section 7874(a)(2)(B)(ii) is not satisfied by reason of the internal group restructuring exception under § 1.7874–1(c)(2). In relevant part, the internal group restructuring exception provides that, for purposes of section 7874(a)(2)(B)(ii), stock of the foreign corporation held by a member of the expanded affiliated group shall be included in the denominator, but not in the numerator, of the ownership fraction, if: (i) Before the acquisition, at least 80 percent of the stock (by vote and value) of the domestic corporation was held directly or indirectly by the corporation that is the common parent of the expanded affiliated group after the acquisition; and (ii) after the acquisition, at least 80 percent of the stock (by vote and value) of the acquiring foreign corporation is held directly or indirectly by such common parent. Taxpayer may take the position that the internal restructuring exception applies because before the acquisition USP indirectly owned 100 percent of the stock of S2 and after the acquisition USP indirectly owned 100 percent of the stock of F1. Therefore, the F1 stock held by S1 would be included in the denominator but not the numerator of the ownership fraction, yielding zero percent former shareholder ownership and resulting in F1 not being treated as a surrogate foreign corporation.

The IRS and the Treasury Department believe it is inappropriate for the internal restructuring exception to apply to divisive transactions such as the one described above. Accordingly, the IRS and the Treasury Department will issue regulations that determine former shareholder ownership under section 7874(a)(2)(B)(ii) when pursuant to the same plan (or a series of related transactions) that includes the acquisition described in section 7874(a)(2)(B)(i), all or part of the stock of the foreign corporation is transferred outside the expanded affiliated group that includes the foreign corporation after the acquisition. The regulations will provide that the internal group restructuring exception of § 1.7874–1(c)(2) does not apply to such transactions and will also modify the application of the general rule of § 1.7874–1(b) to such transactions. The regulations may apply to acquisitions completed on or after June 9, 2009.

L. Effective/Applicability Dates

The temporary regulations included in this document generally apply to acquisitions completed on or after June 9, 2009. However, taxpayers may apply the temporary regulations to acquisitions completed prior to June 9, 2009, if the temporary regulations are applied consistently to all acquisitions completed prior to such date.

The temporary regulations include the modifications announced by Notice 2006–70 (2006–2 CB 252) to the effective date paragraph of § 1.7874–2T, as contained in 26 CFR part 1 revised as of April 1, 2009, for certain acquisitions initiated prior to December 28, 2005.

No inference is intended as to the applicability of other Code or regulatory provisions, or judicial doctrines, to any transactions described in this preamble.

These regulations will expire on or before June 8, 2012.

Effect on Other Documents

Notice 2006–70 (2006–2 CB 252) is obsolete as of June 9, 2009.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a

regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to the temporary regulations.

The temporary regulations do not impose a collection of information. Pursuant to the Regulatory Flexibility Act (5 U.S.C. Chapter 6), it is also hereby certified that the temporary regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. The complexity and cost of a transaction to which section 7874 may apply makes it unlikely that a substantial number of small entities will engage in such a transaction. In addition, the economic impact to any entities affected by section 7874 is derived from the application of the statute, and not from the temporary regulations. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small business.

Drafting Information

The principal author of the temporary regulations is S. James Hawes, Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Section 1.7874–1T also issued under 26 U.S.C. 7874(g). * * *

Section 1.7874–2T also issued under 26 U.S.C. 7874(c)(6) and (g). * * *

■ **Par. 2**. Section 1.7874–1(e) is revised to read as follows:

§ 1.7874–1 Disregard of affiliate-owned stock.

* * * * *

(e) [Reserved]. For further guidance, see § 1.7874–1T(e).

* * * * *

■ **Par. 3**. Section 1.7874–1T is added to read as follows:

§ 1.7874–1T Disregard of affiliate-owned stock (temporary).

(a) through (d) [Reserved]. For further guidance, see § 1.7874–1(a) through (d).

(e) *Stock held by a partnership.* For purposes of this section, each partner in a partnership shall be treated as holding its proportionate share of stock held by the partnership, as determined under the rules and principles of sections 701 through 777.

(f) [Reserved]. For further guidance, see § 1.7874–1(f).

(g) *Effective/applicability date.* Paragraph (e) of this section shall apply to acquisitions completed on or after June 9, 2009. See § 1.7874–1(e), as contained in 26 CFR part 1 revised as of April 1, 2009, for transactions completed before June 9, 2009.

(h) *Expiration date.* The applicability of this section expires on or before June 8, 2012.

■ **Par. 4**. Section 1.7874–2T is revised to read as follows:

§ 1.7874–2T Surrogate foreign corporation (temporary).

(a) *Scope.* This section provides rules for determining whether a foreign corporation shall be treated as a surrogate foreign corporation under section 7874(a)(2)(B). Paragraph (b) of this section provides definitions and special rules. Paragraph (c) of this section provides rules to determine whether a foreign corporation has indirectly acquired properties held by a domestic corporation (or of a partnership). Paragraph (d) of this section provides rules that apply when two or more foreign corporations complete, in the aggregate, an acquisition described in section 7874(a)(2)(B)(i). Paragraph (e) of this section provides rules that apply when a single foreign corporation completes more than one acquisition described in section 7874(a)(2)(B)(i). Paragraph (f) of this section provides rules to identify the stock of a foreign corporation that is held by reason of holding stock in a domestic corporation (or an interest in a domestic partnership). Paragraph (g) of this section provides rules concerning the substantial business activities condition of section 7874(a)(2)(B)(iii). Paragraph (h) of this section provides rules that treat certain publicly traded foreign partnerships as foreign corporations for purposes of section 7874. Paragraph (i) of this section is reserved. Paragraph (j) of this section provides rules concerning the treatment of certain options (or similar interests) for purposes of section 7874. Paragraph (k) of this section provides rules that treat certain interests (including debt, stock, or a partnership interest) as stock of a foreign corporation for purposes of section 7874. Paragraph (l) of this section is reserved. Paragraph (m) of this section provides rules concerning the conversion of a foreign corporation to a domestic corporation by reason of section 7874(b). Paragraph (n) of this section provides examples that illustrate the rules of this section. Paragraph (o) of this section provides the effective/applicability dates of this section. Paragraph (p) of this section provides the expiration date of this section.

(b) *Definitions and special rules.* Except as otherwise indicated, the following definitions and special rules apply for purposes of this section.

(1) The rules of this section are subject to section 7874(c)(4).

(2) An *interest* in a partnership includes a capital or profits interest.

(3) A *former shareholder* of a domestic corporation is any person that held stock in the domestic corporation before the acquisition described in section 7874(a)(2)(B)(i), including any person that holds stock in the domestic corporation both before and after the acquisition.

(4) A *former partner* of a domestic partnership is any person that held an interest in the domestic partnership before the acquisition described in section 7874(a)(2)(B)(i), including any person that holds an interest in the domestic partnership both before and after the acquisition.

(5) References to *properties held* by a domestic corporation include properties held directly or indirectly by the domestic corporation.

(6) The rules and principles of sections 701 through 777 shall be applied for purposes of determining a proportionate amount (or share) of items of a partnership (such as stock, properties, activities and employees).

(7) Any reference to the acquisition of properties held by a domestic corporation (or of a partnership) includes a direct or indirect acquisition of such properties.

(8) In the case of an acquisition of stock of a domestic corporation or an interest in a partnership, the proportionate amount of properties held by the domestic corporation (or of the partnership) that is treated as indirectly acquired shall, as applicable, be determined on the date of the acquisition based on the relative value of—

(i) The stock acquired compared to all outstanding stock of the domestic corporation; or

(ii) The interest acquired compared to all interests in the partnership.

(9) The determination of whether a foreign corporation is a surrogate foreign

corporation is made after the acquisition described in section 7874(a)(2)(B)(i). A foreign corporation that is treated as a surrogate foreign corporation (including a surrogate foreign corporation treated as a domestic corporation described in section 7874(b)) shall continue to be treated as a surrogate foreign corporation (or a domestic corporation), even if the conditions of section 7874(a)(2)(B)(ii) and (iii) are not satisfied at a later date.

(c) *Acquisition of properties*—(1) *Indirect acquisition of properties.* For purposes of section 7874(a)(2)(B)(i), an indirect acquisition of properties held by a domestic corporation (or of a partnership) includes the acquisitions described in paragraphs (c)(1)(i) through (iv) of this section. An acquisition of less than all of the stock of a domestic corporation (or interests in a partnership) shall constitute an indirect acquisition of a proportionate amount of the properties held by the domestic corporation or of the partnership. See paragraph (b)(8) of this section for rules determining the proportionate amount of properties indirectly acquired.

(i) An acquisition of stock of a domestic corporation. See *Example 1* of paragraph (n) of this section for an illustration of the rules of this paragraph.

(ii) An acquisition of an interest in a partnership. See *Example 2* of paragraph (n) of this section for an illustration of the rules of this paragraph.

(iii) An acquisition by a corporation (acquiring corporation) of properties held by a domestic corporation (or of a partnership) in exchange for stock of a foreign corporation (foreign issuing corporation) that is part of the expanded affiliated group that includes the acquiring corporation after the acquisition shall be treated as an acquisition by the foreign issuing corporation. See *Example 3* of paragraph (n) of this section for an illustration of the rules of this paragraph.

(iv) An acquisition by a partnership (acquiring partnership) of properties held by a domestic corporation (or of a partnership) in exchange for stock of a foreign corporation that is part of the expanded affiliated group that would include the acquiring partnership after the acquisition (if the partnership were a corporation) shall be treated as an acquisition by the foreign issuing corporation.

(2) *Acquisition of stock of foreign corporation.* An acquisition of stock of a foreign corporation that owns directly or indirectly stock of a domestic corporation (or an interest in a partnership) shall not constitute an indirect acquisition of any properties held by the domestic corporation (or the partnership). See *Example 4* of paragraph (n) of this section for an illustration of the rules of this paragraph.

(d) *Acquisitions by multiple foreign corporations.* If, pursuant to a plan (or a series of related transactions), two or more foreign corporations complete, in the aggregate, an acquisition described in section 7874(a)(2)(B)(i), then each foreign corporation shall be treated as completing the acquisition for purposes of determining whether such foreign corporation is treated as a surrogate foreign corporation. See *Examples 5* and *6* of paragraph (n) of this section for illustrations of the rules of this paragraph.

(e) *Acquisitions of multiple domestic entities.* If, pursuant to a plan (or a series of related transactions), a foreign corporation completes two or more acquisitions described in section 7874(a)(2)(B)(i) involving domestic corporations and/or domestic partnerships (domestic entities), then, for purposes of section 7874(a)(2)(B)(ii), the acquisitions shall be treated as a single acquisition and the domestic entities shall be treated as a single domestic entity. If the transaction involves one or more domestic corporations and one or more domestic partnerships, the stock of the foreign corporation held by former shareholders and former partners by reason of holding stock or a partnership interest in the domestic entities shall be aggregated for purposes of determining whether the ownership condition of section 7874(a)(2)(B)(ii) is satisfied. See *Example 7* of paragraph (n) of this section for an illustration of the rules of this paragraph.

(f) *Stock held by reason of holding stock in a domestic corporation or an interest in a domestic partnership*—(1) *Specified transactions.* For purposes of section 7874(a)(2)(B)(ii), stock of a foreign corporation that is held by reason of holding stock in a domestic corporation (or an interest in a domestic partnership) includes the stock described in paragraphs (f)(1)(i) through (iii) of this section.

(i) Stock of a foreign corporation received in exchange for, or with respect to, stock of a domestic corporation.

(ii) Stock of a foreign corporation received in exchange for, or with respect to, an interest in a domestic partnership.

(iii) To the extent that paragraph (f)(1)(ii) of this section does not apply, stock of a foreign corporation received by a domestic partnership in exchange for all or part of its properties. In such a case, each partner in the domestic partnership shall be treated as holding its proportionate share of the stock of the foreign corporation by reason of holding an interest in the domestic partnership.

(2) *Transactions involving other property*—(i) *Stock of a domestic corporation.* If, pursuant to the same transaction, stock of a foreign corporation is received in exchange for, or with respect to, stock of a domestic corporation and other property, the stock of the foreign corporation that was received in exchange for, or with respect to, the stock of the domestic corporation shall be determined based on the relative value of the stock of the domestic corporation compared to the aggregate value of such stock and the other property.

(ii) *Interest in a domestic partnership.* If, pursuant to the same transaction, stock of a foreign corporation is received in exchange for, or with respect to, an interest in a domestic partnership and other property, the stock of the foreign corporation that was received in exchange for, or with respect to, the interest in the domestic partnership shall be determined based on the relative value of the interest in the domestic partnership compared to the aggregate value of such interest and the other property.

(3) See *Examples 8* through *10* of paragraph (n) of this section for illustrations of the rules of this paragraph (f).

(g) *Substantial business activities*—(1) *General rule.* The determination of whether, after the acquisition, the expanded affiliated group that includes the foreign corporation has substantial business activities in the foreign country in which, or under the law of which, the foreign corporation is created or organized when compared to the total business activities of the expanded affiliated group, is (subject to paragraph (g)(5) of this section) based on all facts and circumstances.

(2) *Threshold of business activities.* The determination of whether the expanded affiliated group has sufficient business activities in a foreign country is not solely based on the absolute amount of business activities in the foreign country. Rather the determination is based on a comparison of the amount of business activities in the foreign country to the total business activities of the expanded affiliated group. The determination must take into account the total business activities of the expanded affiliated group, including the relevant items identified in paragraph (g)(3) of this section. Thus, it is possible for the business activities of

one expanded affiliated group in a particular country to be substantial when compared to the total business activities of such expanded affiliated group, but for identical business activities of another expanded affiliated group in the same country not to be substantial when compared to the total business activities of that other expanded affiliated group. This may result, for example, because the total business activities of the second expanded affiliated group are more extensive than that of the first expanded affiliated group.

(3) *Items to be considered.* Except as provided in paragraph (g)(5) of this section, relevant items to be considered for determining whether, after the acquisition, the expanded affiliated group has substantial business activities in a foreign country when compared to the total business activities of the expanded affiliated group include the items identified in paragraphs (g)(3)(i) through (v) of this section. The presence or absence of any item, or set of items, is not determinative and the weight given to any item, or set of items, depends on the facts and circumstances.

(i) The historical conduct of continuous business activities in the foreign country by the expanded affiliated group.

(ii) The conduct of continuous business activities in the foreign country by the expanded affiliated group in the ordinary course of one or more active trades or businesses, involving—

(A) Property located in the foreign country that is owned by members of the expanded affiliated group;

(B) The performance of services in the foreign country by employees of the expanded affiliated group; and

(C) Sales of goods to customers.

(iii) The performance in the foreign country of substantial managerial activities by officers and employees of the expanded affiliated group who are based in the foreign country.

(iv) A substantial degree of ownership of the expanded affiliated group by investors resident in the foreign country.

(v) Business activities in the foreign country that are material to the achievement of the overall business objectives of the expanded affiliated group.

(4) *Attribution from a partnership.* For purposes of this paragraph (g), a member of the expanded affiliated group that holds at least a 10 percent capital and profits interest in a partnership shall take into account its proportionate share of all the items of the partnership, including business activities, employees, assets, income and sales. See paragraph (b)(6) of this section for determining a partner's proportionate share of the items of a partnership.

(5) *Items not to be considered.* The following items shall not be taken into account in determining whether, after the acquisition, the expanded affiliated group has substantial business activities in a foreign country when compared to the total business activities of the expanded affiliated group.

(i) Any business activities or income attributable to properties or liabilities the transfer of which is disregarded under section 7874(c)(4).

(ii) Any assets, business activities, or employees located in a foreign country at any time as part of a plan with a principal purpose of avoiding the purposes of section 7874.

(iii) Any assets, business activities, or employees located in the foreign country in which, or under the law of which, the foreign corporation is created or organized if such assets, business activities or employees are transferred to another country pursuant to a plan that existed at the time of the acquisition described in section 7874(a)(2)(B)(i).

(h) *Publicly traded foreign partnerships*—(1) *Treatment as a foreign corporation.* For purposes of section 7874, a publicly traded foreign partnership described in paragraph (h)(2) of this section shall be treated as a foreign corporation that is organized in the foreign country in which, or under the law of which, the publicly traded foreign partnership was created or organized, and interests in the publicly traded foreign partnership shall be treated as stock of the foreign corporation. For purposes of determining whether the foreign corporation shall be treated as a surrogate foreign corporation, a deemed acquisition of assets and liabilities by reason of § 1.708–1(b)(4) shall not constitute an acquisition described in section 7874(a)(2)(B)(i).

(2) *Publicly traded foreign partnership.* A publicly traded foreign partnership described in this paragraph (h)(2) is any foreign partnership that would, but for section 7704(c), be treated as a corporation under section 7704(a):

(i) At the time of the acquisition described in section 7874(a)(2)(B)(i); or

(ii) At any time after the acquisition pursuant to a plan that existed at the time of the acquisition. For this purpose, a plan shall be deemed to exist at the time of the acquisition if the foreign partnership would, but for section 7704(c), be treated as a corporation under section 7704(a) at any time during the two-year period following the completion of the acquisition.

(3) *Surrogate foreign corporation to which section 7874(b) applies.* If paragraph (h)(1) of this section applies to a publicly traded foreign partnership and the foreign corporation is a surrogate foreign corporation to which section 7874(b) applies, the publicly traded foreign partnership shall be treated as a domestic corporation for purposes of the Internal Revenue Code (Code). See paragraph (h)(6) of this section for the timing and treatment of the conversion of the publicly traded foreign partnership to a domestic corporation. See *Example 11* of paragraph (n) of this section for an illustration of the rules of this paragraph.

(4) *Surrogate foreign corporation to which section 7874(b) does not apply.* If paragraph (h)(1) of this section applies to a publicly traded foreign partnership and the foreign corporation is a surrogate foreign corporation to which section 7874(b) does not apply, the publicly traded foreign partnership shall continue to be treated as a foreign partnership for purposes of the Code, but section 7874(a)(1) shall apply to any expatriated entity (as defined in section 7874(a)(2)(A)). See *Example 13* of paragraph (n) of this section for an illustration of the rules of this paragraph.

(5) *Foreign corporation not treated as a surrogate foreign corporation.* If paragraph (h)(1) of this section applies to a publicly traded foreign partnership and the foreign corporation is not treated as a surrogate foreign corporation, the status of the publicly traded foreign partnership as a foreign partnership shall not be affected by section 7874. See *Example 12* of paragraph (n) of this section for an illustration of the rules of this paragraph.

(6) *Conversion to a domestic corporation.* Except for purposes of determining whether the publicly traded foreign partnership is a surrogate foreign corporation, if paragraph (h)(1) of this section applies to a publicly traded foreign partnership and the foreign corporation is a surrogate foreign corporation to which section 7874(b) applies, then immediately before the first date properties are acquired as part of the acquisition described in section 7874(a)(2)(B)(i) the publicly traded foreign partnership shall be treated as transferring all of its assets and liabilities to a newly formed domestic corporation in exchange solely for stock of the domestic corporation, and then distributing such stock to its partners in proportion to their partnership interests

in liquidation of the partnership. The treatment of the transfer of assets and liabilities to the domestic corporation and the distribution of the stock of the domestic corporation to the partners in liquidation of the partnership shall be determined under all relevant provisions of the Code and general tax principles.

(i) [Reserved].

(j) *Options and similar interests*—(1) *Domestic corporation (or partnership).* Except to the extent provided in this paragraph (j), for purposes of section 7874, an option (or similar interest) with respect to a domestic corporation (or a partnership, domestic or foreign) shall be treated as stock of the domestic corporation (or an interest in the partnership) with a value equal to the holder's claim on the equity of the domestic corporation (or partnership) immediately before the acquisition described in section 7874(a)(2)(B)(i). For this purpose, the equity of the domestic corporation (or partnership) shall not include the amount of any property the holder of the option (or similar interest) would be required to provide to the domestic corporation (or partnership) under the terms of the option (or similar interest) if such option (or similar interest) were exercised. See *Example 16* of paragraph (n) of this section for an illustration of the rules of this paragraph.

(2) *Foreign corporation*—(i) *General rule.* Except to the extent provided in this paragraph (j), for purposes of section 7874 an option (or similar interest) with respect to a foreign corporation shall be treated as stock of the foreign corporation with a value equal to the holder's claim on the equity of the foreign corporation after the acquisition described in section 7874(a)(2)(B)(i). For this purpose, the equity of the foreign corporation shall not include the amount of any property the holder of the option (or similar interest) would be required to provide to the foreign corporation under the terms of the option (or similar interest) if such option (or similar interest) were exercised. See *Examples 14* through *16* of paragraph (n) of this section for illustrations of the rules of this paragraph (j)(2)(i).

(ii) *Certain options (or similar interests) disregarded.* Paragraph (j)(2)(i) of this section shall not apply to an option (or similar interest) if a principal purpose of the issuance or acquisition of the option (or similar interest) is to avoid the foreign corporation being treated as a surrogate foreign corporation.

(3) *Similar interest.* For purposes of this paragraph (j), an interest similar to an option (a similar interest) includes, but is not limited to, a warrant, a convertible debt instrument, an instrument other than debt that is convertible into stock or a partnership interest, a put, stock or a partnership interest subject to risk of forfeiture, a contract to acquire or sell stock or a partnership interest, and an exchangeable share or exchangeable partnership interest.

(4) *Multiple claims on equity.* Paragraphs (j)(1) and (j)(2)(i) of this section shall not apply to an option (or similar interest) to the extent treating the option (or similar interest) as stock of a corporation (or interest in a partnership) would duplicate a shareholder's (or partner's) claim on the equity of the corporation (or partnership) by reason of holding stock in the corporation (or an interest in the partnership). However, except to the extent otherwise provided in section 7874, in all cases stock of a corporation held by a shareholder or an interest in a partnership held by a partner (without regard to this paragraph (j)) shall be taken into account for purposes of section 7874. See *Example 15* of paragraph (n) of this section for an illustration of the rules of this paragraph (j)(4).

(k) *Interests treated as stock of a foreign corporation*—(1) *Stock or other interests.* If the conditions of paragraphs (k)(1)(i) and (ii) of this section are satisfied, then, for purposes of section 7874, any interest (including stock or a partnership interest) that is not otherwise treated as stock of a foreign corporation (including under paragraph (j)(2)(i) of this section) shall be treated as stock of the foreign corporation. See *Examples 17* and *18* of paragraph (n) of this section for illustrations of the rules of this paragraph (k)(1).

(i) The interest provides the holder distribution rights that are substantially similar in all material respects to the distribution rights provided by stock in the foreign corporation. For this purpose, distribution rights include rights to dividends (or partnership distributions), distributions in redemption of the interest (in whole or in part), distributions in liquidation, or other similar distributions that represent a return on, or of, the holder's investment in the interest.

(ii) Treating the interest as stock of the foreign corporation has the effect of treating the foreign corporation as a surrogate foreign corporation.

(2) *Creditor claims*—(i) *Domestic corporation.* For purposes of section 7874, if, immediately prior to the first date properties are acquired as part of an acquisition described in section 7874(a)(2)(B)(i), a domestic corporation is in a title 11 or similar case (as defined in section 368(a)(3)), or the liabilities of the domestic corporation exceed the value of its assets, then each creditor of the domestic corporation shall be treated as a shareholder of the domestic corporation and any claim of the creditor against the domestic corporation shall be treated as stock of the domestic corporation. See *Example 19* of paragraph (n) of this section for an illustration of the rules of this paragraph (k)(2)(i).

(ii) *Domestic or foreign partnership.* For purposes of section 7874, if, immediately prior to the first date properties are acquired as part of an acquisition described in section 7874(a)(2)(B)(i), a partnership (foreign or domestic) is in a title 11 or similar case (as defined in section 368(a)(3)), or the liabilities of the partnership exceed the value of its assets, then each creditor of the partnership shall be treated as a partner in the partnership and any claim of the creditor against the partnership shall be treated as an interest in the partnership.

(iii) *Treatment of creditor as shareholder or partner.* A creditor that is treated as a shareholder or partner under paragraph (k)(2)(i) or (ii) of this section shall be treated as a shareholder or partner for all purposes of section 7874. See, for example, § 1.7874–1(c) and paragraph (f) of this section. See *Example 19* of paragraph (n) of this section for an illustration of the rules of this paragraph (k)(2)(iii).

(l) [Reserved].

(m) *Application of section 7874(b)*—(1) *Conversion to a domestic corporation.* Except for purposes of determining whether a foreign corporation is treated as a surrogate foreign corporation, the conversion of a foreign corporation to a domestic corporation by reason of section 7874(b) shall constitute a reorganization described in section 368(a)(1)(F) that occurs immediately before the first date properties are acquired as part of the acquisition described in section 7874(a)(2)(B)(i). See, for example, §§ 1.367(b)–2 and 1.367(b)–3 for certain consequences of the reorganization. The treatment of all other aspects of the conversion shall be determined under the relevant provisions of the Code and general tax principles. See *Example 20* of paragraph (n) of this section for an illustration of the rules of this paragraph (m)(1).

(2) *Entity classification.* A foreign corporation that is treated as a domestic corporation under section 7874(b) is not an eligible entity as defined in § 301.7701–3(a) of this chapter and

therefore may not elect to be treated as other than an association for Federal tax purposes.

(3) *Application of section 367.* If a foreign corporation is treated as a domestic corporation under section 7874(b), section 367 shall not apply to any transfer of property by a United States person to such foreign corporation as part of the acquisition described in section 7874(a)(2)(B)(i). However, section 367 shall apply to the conversion of the foreign corporation to a domestic corporation. See paragraph (m)(1) of this section. See *Example 20* of paragraph (n) of this section for an illustration of the rules of this paragraph (m)(3).

(n) *Examples*—(1) *Assumed facts.* Except as otherwise stated, assume the following for purposes of the examples included in paragraph (n)(2) of this section.

(i) DC1 and DC2 are domestic corporations.

(ii) FA, FP, F1, F2, F3, and F4 are foreign corporations organized in Country A.

(iii) DPS is a domestic partnership that conducts a trade or business.

(iv) FPS is a foreign partnership that is not publicly traded.

(v) A, B, and C are unrelated individuals.

(vi) Each entity has a single class of equity outstanding and is unrelated to all other entities.

(vii) All transactions are completed pursuant to a plan.

(viii) All acquisitions of properties are completed after March 4, 2003.

(ix) Neither section 7874(c)(4) nor paragraph (j)(2)(ii) of this section applies.

(2) *Examples.* The following examples illustrate the rules of this section.

Example 1. Acquisition of stock of a domestic corporation. (i) *Facts.* FA acquires 25 percent of the outstanding stock of DC1.

(ii) *Analysis.* Under paragraph (c)(1)(i) of this section, for purposes of section 7874(a)(2)(B)(i) FA is treated as acquiring 25 percent of the properties held by DC1 on the date of the stock acquisition.

Example 2. Acquisition of a partnership interest. (i) *Facts.* DPS wholly owns DC1. FA acquires a 40 percent interest in DPS.

(ii) *Analysis.* Under paragraph (c)(1)(ii) of this section, for purposes of section 7874(a)(2)(B)(i) FA is treated as acquiring 40 percent of the DC1 stock held by DPS on the date of the acquisition of the partnership interest. Further, under paragraph (c)(1)(i) of this section, for purposes of section 7874(a)(2)(B)(i) FA is treated as acquiring 40 percent of the properties held by DC1 on the date of the acquisition of the partnership interest.

Example 3. Acquisition of stock by a subsidiary. (i) *Facts.* FP wholly owns FA. FA acquires all the outstanding stock of DC1 in exchange solely for FP stock. FP and FA are members of the same expanded affiliated group after the acquisition.

(ii) *Analysis.* Under paragraph (c)(1)(i) of this section, for purposes of section 7874(a)(2)(B)(i) FA is treated as acquiring 100 percent of the properties held by DC1 on the date of the stock acquisition. Further, under paragraph (c)(1)(iii) of this section, for purposes of section 7874(a)(2)(B)(i) FP is also treated as acquiring 100 percent of the properties held by DC1 on the date of the stock acquisition. The result would be the same if instead FA had directly acquired all the properties held by DC1 in exchange for FP stock.

Example 4. Acquisition of stock of a foreign corporation. (i) *Facts.* FP wholly owns DC1. FA acquires all of the outstanding stock of FP.

(ii) *Analysis.* Under paragraph (c)(2) of this section, for purposes of section 7874(a)(2)(B)(i) FA is not treated as acquiring any properties held by DC1 on the date of the acquisition of the FP stock.

Example 5. Acquisition of stock by multiple foreign corporations. (i) *Facts.* Pursuant to the same plan, the shareholders of DC1 transfer all of their DC1 stock equally to F1, F2, F3, and F4 in exchange solely for stock of each foreign corporation.

(ii) *Analysis.* Under paragraph (c)(1)(i) of this section, in the aggregate F1, F2, F3 and F4 are treated as acquiring substantially all of the properties held by DC1. Because the acquisition was pursuant to the same plan, under paragraph (d) of this section, F1, F2, F3, and F4 are each treated as acquiring substantially all of the properties held by DC1 for purposes of determining whether each foreign corporation shall be treated as a surrogate foreign corporation.

Example 6. Acquisition of assets by multiple foreign corporations. (i) *Facts.* Individual A wholly owns DC1. DC1 forms F1, F2, F3, and F4, and transfers an equal portion of its properties to each corporation in exchange solely for stock of the corporation. Pursuant to the same plan DC1 then distributes the stock of each foreign corporation to individual A.

(ii) *Analysis.* Because pursuant to the same plan F1, F2, F3 and F4 acquired, in the aggregate, substantially all of the properties held by DC1, under paragraph (d) of this section, F1, F2, F3, and F4 are each treated as acquiring substantially all of the properties held by DC1 for purposes of determining whether each foreign corporation shall be treated as a surrogate foreign corporation.

Example 7. Acquisition of multiple domestic corporations. (i) *Facts.* Individual A wholly owns DC1, and individual B wholly owns DC2. Pursuant to the same plan, A and B transfer all of their DC1 stock and DC2 stock to FA, a newly formed corporation, in exchange solely for all 100 shares of FA stock outstanding.

(ii) *Analysis.* Under paragraph (c)(1)(i) of this section, for purposes of section 7874(a)(2)(B)(i) FA is treated as acquiring all of the properties held by DC1 and DC2 on the date of the stock acquisition. Under paragraph (e) of this section, because pursuant to the same plan FA acquired substantially all of the properties held by DC1 and DC2, for purposes of determining whether FA shall be treated as a surrogate foreign corporation, DC1 and DC2 shall be treated as a single domestic corporation, of which A and B are former shareholders. Thus, individuals A and B are treated as holding all 100 shares of the FA stock by reason of holding stock of such domestic corporation, and the ownership fraction under section 7874(a)(2)(B)(ii) is 100/100, or 100 percent.

Example 8. Exchange of stock and other property. (i) *Facts.* Individual A wholly owns DC1 and F1. DC1 has a $40x value and F1 has a $60x value. Individual A transfers all of the DC1 stock and F1 stock to FA, a newly-formed corporation, in exchange solely for FA stock.

(ii) *Analysis.* Under paragraphs (f)(1)(i) and (f)(2)(i) of this section, for purposes of section 7874(a)(2)(B)(ii) individual A is considered to hold 40 percent of the FA stock by reason of holding stock in DC1 ($100x FA stock multiplied by $40x/$100x, the relative value of the DC1 stock to all the property transferred by A to FA).

Example 9. Stock received as a distribution. (i) *Facts.* Pursuant to a divisive reorganization described in section 368(a)(1)(D), DC1 contributes substantially all of its properties to FA, a newly-formed corporation, in exchange solely for FA stock and then distributes the FA stock to its shareholders under section 355.

(ii) *Analysis.* Under paragraph (f)(1)(i) of this section, for purposes of section 7874(a)(2)(B)(ii) the FA stock received by the DC1 shareholders as a distribution with respect to the DC1 stock is considered held by reason of holding stock in DC1. The result would be the same if the transaction did not qualify as a reorganization (for example, if the distribution were subject to sections 301 and 311(b)).

Example 10. Incorporation of a partnership trade or business. (i) *Facts.* Individuals A and B equally own DPS. DPS transfers substantially all of its properties constituting a trade or business to FA, a newly-formed corporation, solely in exchange for FA stock. DPS retains the FA stock after the transaction.

(ii) *Analysis.* Under paragraph (f)(1)(iii) of this section, for purposes of section 7874(a)(2)(B)(ii) individuals A and B are treated as holding a proportionate amount (that is, an equal amount) of the FA stock held by DPS by reason of holding an interest in DPS.

Example 11. Publicly traded foreign partnership treated as domestic corporation. (i) *Facts.* Pursuant to a plan, DC1 and individual B organize a limited liability company (HPS) under the law of Country A. DC1 owns 99.9 percent of the membership interests in HPS, and B owns 0.1 percent of the membership interests in HPS. HPS is a foreign eligible entity under § 301.7701–2 of this chapter, and DC1 and B make an election under § 301.7701–3 of this chapter to treat HPS as a partnership for Federal tax purposes as of the date of the formation of HPS. HPS forms DC2. DC2 merges with and into DC1. Pursuant to the merger agreement, the DC1 shareholders exchange their DC1 stock solely for membership interests in HPS. After the

merger HPS wholly owns DC1, and the former shareholders of DC1 own a greater than 80 percent interest in HPS by reason of holding stock of DC1. Public trading of the HPS ownership interests begins the day after the date on which merger is completed. HPS is not treated as a corporation under section 7704(a) by reason of section 7704(c). If HPS were a corporation, the condition of section 7874(a)(2)(B)(iii) would be satisfied.

(ii) *Analysis.* HPS is a publicly traded foreign partnership that is described in paragraph (h)(2) of this section. Therefore, under paragraph (h)(1) of this section, for purposes of section 7874 HPS is treated as a foreign corporation organized under the law of Country A and the membership interests in HPS are treated as stock of the foreign corporation. The foreign corporation is treated as a surrogate foreign corporation under section 7874(a)(2)(B) because, pursuant to the merger, HPS acquired substantially all of the properties held by DC1, the former shareholders of DC1 hold at least 60 percent of the stock of the foreign corporation by reason of holding stock of DC1, and the expanded affiliated group that includes the foreign corporation does not have substantial business activities in Country A when compared to the total business activities of the expanded affiliated group. Further, because the former shareholders of DC1 hold at least 80 percent of the stock of the foreign corporation by reason of holding stock of DC1, section 7874(b) applies to the surrogate foreign corporation, and therefore HPS is treated as a domestic corporation for purposes of the Code. Under paragraph (h)(6) of this section, except for purposes of determining whether HPS is a surrogate foreign corporation, immediately before the merger of DC2 with and into DC1 HPS is treated as transferring all of its assets and liabilities to a new domestic corporation in exchange solely for stock of the domestic corporation. HPS is then treated as proportionately distributing such stock to its membership holders in liquidation of the partnership. In addition, as a result of the merger of DC2 with and into DC1, the former shareholders of DC1 shall be treated as receiving stock of a domestic corporation in exchange for their DC1 stock.

Example 12. Publicly traded foreign partnership not treated as a surrogate foreign corporation. (i) *Facts.* The facts are the same as in *Example 11* of this section, except that, after the acquisition, the expanded affiliated group that includes HPS (treated as a foreign corporation for this purpose) has substantial business activities in Country A when compared to the total business activities of the expanded affiliated group.

(ii) *Analysis.* Under paragraph (h)(1) of this section, for purposes of section 7874 HPS is treated as a foreign corporation and the membership interests in HPS are treated as stock of the foreign corporation. However, the foreign corporation is not treated as a surrogate foreign corporation under section 7874(a)(2)(B) because, after the acquisition, the expanded affiliated group that includes HPS has substantial business activities in Country A when compared to the total business activities of the expanded affiliated group. Therefore, under paragraph (h)(5) of this section, section 7874 does not apply and the status of HPS as a foreign partnership is not affected. In addition, DC1 is not treated as an expatriated entity under section 7874(a) by reason of the acquisition.

Example 13. Publicly traded foreign partnership treated as a surrogate foreign corporation but not as a domestic corporation. (i) *Facts.* FPS is a publicly traded foreign partnership organized in Country A that, by reason of section 7704(c), is not treated as a corporation under section 7704(a). FPS acquires all the stock of DC1 in exchange for partnership interests in FPS. After the acquisition, the former shareholders of DC1 hold a 75 percent interest in FPS by reason of holding DC1 stock. After the acquisition, the expanded affiliated group that includes FPS (treated as a foreign corporation for this purpose) does not have substantial business activities in Country A when compared to the total business activities of the expanded affiliated group.

(ii) *Analysis.* Under paragraph (h)(1) of this section, for purposes of section 7874 FPS is treated as a foreign corporation and the partnership interests in FPS are treated as stock of the foreign corporation. FPS is treated as a surrogate foreign corporation because the conditions of section 7874(a)(2)(B) are satisfied. However, because the former shareholders of DC1 hold less than an 80 percent interest in FPS by reason of holding DC1 stock, section 7874(b) does not apply to FPS. Therefore, under paragraph (h)(4) of this section FPS continues to be treated as a foreign partnership for purposes of the Code, but section 7874(a)(1) applies to DC1 and any other expatriated entity.

Example 14. Warrant to acquire stock from the foreign corporation. (i) *Facts.* Individual A wholly owns DC1. DC1 has a $200× value. Individual B wholly owns FA. Individual C holds a warrant to acquire FA stock from FA at an exercise price of $20×. Individual A transfers all of its DC1 stock to FA in exchange solely for FA stock. At the time of the transfer, the FA stock that individual C can acquire pursuant to the warrant has a $70× value.

(ii) *Analysis.* Under paragraph (j)(2) of this section, for purposes of section 7874 individual C is treated as owning FA stock with a $50× value. This amount represents individual C's claim on the equity of FA after the acquisition ($70× value of FA stock that may be acquired pursuant to the warrant, less $20× exercise price), without taking into account the $20× individual C would be required to provide to FA upon the exercise of the warrant.

Example 15. Option to acquire stock from another shareholder. (i) *Facts.* The facts are the same as in *Example 14* except that, instead of holding a warrant issued by FA, individual C holds an option to acquire FA stock from individual B for an exercise price of $20×. At the time of the acquisition, the FA stock that individual C can acquire under the option has a $70× value.

(ii) *Analysis.* Under paragraph (j)(4) of this section, for purposes of section 7874, individual C is not treated as owning FA stock by reason of holding the option because treating the option as FA stock would have the effect of partially duplicating individual B's claim on the equity of FA at the time of the acquisition by reason of holding FA stock. However, all of the FA stock owned by individual B shall be taken into account for purposes of section 7874.

Example 16. Warrant to acquire stock from the domestic corporation. (i) *Facts.* A DC1 employee holds a warrant to acquire DC1 stock from DC1. In connection with the acquisition by FA of substantially all of the properties held by DC1, the DC1 employee receives a warrant from FA to acquire 15 shares of FA stock in exchange for the warrant to acquire DC1 stock.

(ii) *Analysis.* Under paragraph (j)(1) of this section, for purposes of section 7874 the warrant held by the DC1 employee is treated as DC1 stock with a value equal to the employee's claim on the equity of DC1 immediately before the acquisition. Further, under paragraph (j)(2) of this section, for purposes of section 7874 the DC1 employee is treated as holding FA stock with a value equal to the employee's claim on the equity of FA after the acquisition by reason of holding the warrant to acquire DC1 stock (treated as DC1 stock for this purpose).

Example 17. Stock in a subsidiary treated as stock of a foreign parent corporation. (i) *Facts.* (A) Individuals A and B equally own DC1. FA, a newly formed corporation, issues stock in a public offering for cash. FA contributes part of the cash from the public offering to DC2, a newly-formed corporation, in exchange for all the stock of DC2. DC2 merges with and into DC1 with DC1 surviving. Pursuant to the merger agreement, individuals A and B exchange their DC1 stock for cash and shares of class B stock of DC1. Following the merger FA owns all the class A stock of DC1. FA holds few assets other than the class A stock of DC1. Individuals A and B own all the class B stock of DC1. DC1 has no other class of stock outstanding.

(B) The class B stock entitles individuals A and B to dividend distributions approximately equal to any dividend distributions made by FA with respect to its publicly traded stock. In certain circumstances, the class B stock also permits individuals A and B to require DC1 to redeem the stock at fair market value. The class B stock does not provide individuals A and B voting rights with respect to FA.

(ii) *Analysis.* The dividend rights provided by the class B stock are substantially similar in all material respects to the dividend rights provided by the FA stock. In addition, because FA holds few assets other than the class A stock, the value of the class B stock held by individuals A and B is approximately equal to the value of a corresponding amount of publicly traded FA stock. The distribution rights on liquidation (or redemption) provided by the class B stock, therefore, are substantially similar in all material respects to the distribution rights on liquidation (or redemption) provided by the FA stock. As a result, the distribution rights provided by the class B stock are substantially similar in all material respects to the distribution rights provided by the publicly traded FA stock. Thus, if treating the class B stock as FA stock would have the effect of treating FA as a surrogate foreign corporation, under

paragraph (k)(1) of this section the class B stock shall be treated as FA stock for purposes of section 7874.

Example 18. Partnership interest treated as stock of foreign acquiring corporation. (i) *Facts.* (A) Individuals A and B equally own DC1. FA, a newly-formed corporation, issues stock in a public offering for cash. Individuals A and B and FA organize FPS. FA transfers part of the cash from the public offering to FPS in exchange for a class A partnership interest. FA holds few assets other than the class A partnership interest. Individuals A and B transfer their DC1 stock to FPS in exchange for class B partnership interests.

(B) The class B partnership interests entitle individuals A and B to cash distributions from FPS approximately equal to any dividend distributions made by FA with respect to its publicly traded stock. In certain circumstances, the class B partnership interests also permit individuals A and B to require FPS to redeem the interests in exchange for cash equal to the value of an amount of FA stock as determined on the redemption date. The class B partnership interests do not provide individuals A or B voting rights with respect to FA.

(ii) *Analysis.* The non-liquidating distribution rights provided by the class B partnership interests are substantially similar in all material respects to the dividend rights provided by the FA stock. Because FA holds few assets other than the class A partnership interest, the value of the class B partnership interests held by individuals A and B is approximately equal to a corresponding amount of FA stock. The distribution rights on liquidation (or redemption) provided by the class B partnership interests, therefore, are substantially similar in all material respects to distribution rights on liquidation (or redemption) provided by the FA stock. Thus, the distribution rights provided by the class B partnership interests are substantially similar in all material respects to the distribution rights provided by the publicly traded FA stock. As a result, if treating the class B partnership interests as FA stock would have the effect of treating FA as a surrogate foreign corporation, under paragraph (k)(1) of this section the class B partnership interests shall be treated as FA stock for purposes of section 7874.

Example 19. Creditor treated as a shareholder. (i) *Facts.* Individuals A and B equally own DC1. The liabilities of DC1 exceed the value of its assets. Pursuant to a plan, FA, a newly-formed corporation, acquires substantially all of the properties held by DC1 in exchange solely for FA stock. Pursuant to the plan, the DC1 stock held by individuals A and B is cancelled, and the creditors of DC1 receive all the FA stock in exchange for their claims against DC1.

(ii) *Analysis.* Because immediately before the first date on which properties are acquired as part of the acquisition described in section 7874(a)(2)(B)(i) the liabilities of DC1 exceed the value of its assets, under paragraph (k)(2)(i) of this section, for purposes of section 7874 the creditors of DC1 are treated as shareholders of DC1 and the creditors' claims against DC1 are treated as DC1 stock. Therefore, for purposes of section 7874(a)(2)(B)(ii) the FA stock received by the creditors of DC1 by reason of their claims against DC1 is considered held by former shareholders of DC1 by reason of holding DC1 stock.

Example 20. Conversion to a domestic corporation and application of section 367. (i) *Facts.* Individuals A and B are United States persons and equally own DC1. Pursuant to a plan, individuals A and B transfer their DC1 stock to FA in exchange solely for 80 percent of the outstanding FA stock. After the acquisition, the expanded affiliated group that includes FA does not have substantial business activities in Country A when compared to the total business activities of the expanded affiliated group.

(ii) *Analysis.* Under paragraph (c)(1)(i) of this section, for purposes of section 7874(a)(2)(B)(i) FA is treated as acquiring all of the properties held by DC1 on the date of the stock acquisition. After the acquisition, the former shareholders of DC1 own 80 percent of the stock of FA by reason of holding DC1 stock. Therefore, FA is a surrogate foreign corporation that is treated as a domestic corporation under section 7874(b). Under paragraph (m)(1) of this section, except for purposes of determining whether FA is treated as a surrogate foreign corporation, the conversion of FA to a domestic corporation shall constitute a reorganization described in section 368(a)(1)(F) that occurs immediately before the stock acquisition. Section 367 applies to the conversion of FA to a domestic corporation. See, for example, §§ 1.367(b)–2 and 1.367(b)–3 for the consequences of the conversion. Under paragraph (m)(3) of this section, section 367 does not apply to the transfers of DC1 stock by individuals A and B to FA.

(o) *Effective/applicability date*—(1) *Temporary regulations filed on* June 9, 2009. This section shall apply to acquisitions completed on or after June 9, 2009. However, taxpayers may apply this section to acquisitions completed before June 9, 2009, if this section is applied consistently to all acquisitions completed before such date.

(2) *Application of prior temporary regulations to certain acquisitions completed on or after June 6, 2006.* Section 1.7874–2T, as contained in 26 CFR part 1 revised as of April 1, 2009, shall not apply to acquisitions completed on or after June 6, 2006, pursuant to a written agreement that was (subject to customary conditions) binding on December 28, 2005, and at all times thereafter (binding commitment). A binding commitment shall include options and similar interests entered into in connection with one or more written agreements described in the preceding sentence. Accordingly, § 1.7874–2T, as contained in 26 CFR part 1 revised as of April 1, 2009, shall not apply to acquisitions that occur, in whole or in part, as a result of the exercise of such options or similar interests.

(p) *Expiration date.* The applicability of this section expires on or before June 8, 2012.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: June 8, 2009.

Michael Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–13770 Filed 6–9–09; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1261]

RIN 1625–AA00

Safety Zone; AVI July Fireworks Display; Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the navigable waters of the lower Colorado River, Laughlin, NV, in support of a fireworks display near the AVI Resort and Casino. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8:15 p.m. to 9:15 p.m. on July 4, 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–2008–1261 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–2008–1261 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 the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, Coast Guard; telephone 619–278–7262, e-mail *Shane.E.Jackson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 20, 2009 we published a notice of proposed rulemaking (NPRM) entitled ''Safety zone; AVI July Fireworks Display; Laughlin, Nevada,'' in the **Federal Register** (74 FR 17931). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

Background and Purpose

The AVI Resort and Casino is sponsoring the AVI July fireworks display, which is to be held at the AVI Resort and Casino on the Lower Colorado River in Laughlin, Nevada. The Coast Guard is establishing a temporary safety zone on the navigable waters of the Lower Colorado River, Laughlin, NV in support of the AVI July fireworks display. The safety zone is set as a 1000 foot radius around the firing site in approximate position: 35°00′45″ N, 114°38′18″ W. This temporary safety zone is necessary to provide for the safety of the show's crew, spectators, participants of the event, participating vessels, and other vessels and users of the waterway.

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.

This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Colorado River from 8:15 p.m. to 9:15 p.m. on July 4, 2009. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone will only be in effect for one hour late in the evening when vessel traffic is low. Before the effective period, we will publish a Local Notice to Mariners (LNM).

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 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new temporary zone § 165.T11–167 to read as follows:

§ 165.T11–167 Safety zone; AVI July Fireworks Display; Laughlin, Nevada.

(a) *Location.* The following area is a safety zone: the navigable waters extending out 1000 feet from the firing site located at approximately 35°00′45″ N, 114°38′18″ W.

(b) *Enforcement Period.* This rule will be enforced from 8:15 p.m. to 9:15 p.m. on July 4, 2009. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone.

(c) *Definitions.* The following definition applies to this section: designated representative means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 27, 2009.

T.H. Farris,

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

[FR Doc. E9–13776 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2009–0191]

RIN 1625–AA00

Safety Zone: Ohio River Mile 265.2 to 266.2 and From Kanawha River Mile 0.0 to 0.5, Point Pleasant, WV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the waters of the Ohio River beginning at mile 265.2 and ending at mile 266.2, and the waters of the Kanawha River beginning at mile 0.0 and ending at mile 0.5, extending the entire width of both rivers. This safety zone is needed to protect persons and vessels from the potential safety hazards associated with the City of Point Pleasant 2009 Fireworks Display. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port Ohio Valley or a designated representative.

DATES: This rule is effective from 9:30 p.m. on July 4, 2009 until 10:30 p.m. on July 4, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0191 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–2009–0191 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Sean T. Lewis, Marine Safety Unit Huntington at

(304) 733–0198, extension 2135 or e-mail at *sean.t.lewis@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is needed to protect participant and spectator craft from the hazards associated with the fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Publishing an NPRM and delaying its effective date would be contrary to public interest because immediate action is needed to protect vessels and mariners from the hazards associated with the fireworks display.

Background and Purpose

The City of Point Pleasant, WV is sponsoring a fireworks display on July 4, 2009. Fireworks will be launched from the left descending bank of the Ohio River at mile 265.7. A hazardous situation could exist for vessels, mariners and spectators in the vicinity of the fireworks display. A safety zone is needed to protect those vessels, mariners and spectators from the hazards associated with this fireworks display.

Discussion of Rule

The Captain of the Port Ohio Valley is establishing a temporary safety zone for the waters the Ohio River beginning at mile 265.2 and ending at mile 266.2, and the waters of the Kanawha River beginning at mile 0.0 and ending at mile 0.5, extending the entire width of both rivers. The term ''participating vessel'' includes all vessels registered with the fireworks event officials to work in the event. With the exception of participating vessels and those mariners operating participating vessels, all vessels and persons are prohibited from transiting within this safety zone unless authorized by the Captain of the Port Ohio Valley or a designated representative. The Captain of the Port Ohio Valley may be contacted on VHF–FM Channels 13 or 16, or by telephone at (800) 253–7465. This rule is effective from 9:30 p.m. on July 4, 2009 until 10:30 p.m. on July 4, 2009. The Captain of the Port Ohio Valley will inform the public through broadcast notice to mariners of the enforcement period for the safety zone.

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.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the Ohio River beginning at mile 265.2 and ending at mile 266.2, and the waters of the Kanawha River beginning at mile 0.0 and ending at mile 0.5 from 9:30 p.m. on July 4, 2009 until 10:30 p.m. on July 4, 2009. This safety zone will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for a short period of time.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g.), of the Instruction. This rule involves establishment of a safety zone to protect persons and vessels from the potential safety hazards associated with the City of Point Pleasant 2009 Fireworks Display. Under figure 2–1, paragraph (34)(g.), 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 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T08–0191 is added to read as follows:

§ 165.T08–0191 Safety Zone; Ohio River, Mile 265.2 to 266.2 and from Kanawha River, Mile 0.0 to 0.5, Point Pleasant, WV.

(a) *Location.* The following area is a safety zone: The Ohio River mile 265.2 to 266.2 and from Kanawha River mile 0.0 to 0.5, Point Pleasant, WV

(b) *Effective date.* This rule is effective from 9:30 p.m. on July 4, 2009 until 10:30 p.m. on July 4, 2009.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited to all persons and vessels except participant vessels and those vessels specifically authorized by the Captain of the Port Ohio Valley or a designated representative.

(2) Persons or vessels other than participating vessels and mariners requiring entry into or passage through the zone must request permission from the Captain of the Port Ohio Valley or a designated representative. They may be contacted on VHF–FM Channel 13 or 16 or by telephone at (800) 253–7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Ohio Valley and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 1, 2009.

H.M. Nguyen,

Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.

[FR Doc. E9–13778 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0268]

RIN 1625–AA00

Safety Zone; Sea World Summer Nights Fireworks; Mission Bay, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone, on the navigable waters of Mission Bay in support of the Sea World Summer Nights Fireworks. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8 p.m. on June 12, 2009 to 10 p.m. on August 30, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0268 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–2009–0268 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. 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 Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7262, e-mail *Shane.E.Jackson@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect and delay would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

Background and Purpose

Sea World is sponsoring the Sea World Summer Nights Fireworks, which will include a fireworks presentation from a barge in Mission Bay. The safety zone will be a 600 foot radius around the barge in approximate position 32°46′03″ N, 117°13′11″ W. This temporary safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway.

Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 8 p.m. to 10 p.m. on June 12, 2009 through August 30, 2009. The limits of the safety zone will be a 600 foot radius around the barge in approximate position 32°46′03″ N, 117°13′11″ W. The safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

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. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can pass safely around the safety zone. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone for fireworks displays. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new temporary zone § 165.T11–184 to read as follows:

§ 165.T11–184 Safety zone; Sea World Summer Nights Fireworks; Mission Bay, San Diego, California.

(a) *Location.* The limits of the safety zone will include a 600 foot radius around the barge in approximate position 32°46′03″ N, 117°13′11″ W.

(b) *Enforcement Period.* This section will be enforced from 8 p.m. to 10 p.m. on June 12, 2009 through August 30, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: May 27, 2009.

T. H. Farris,

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

[FR Doc. E9–13772 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0070]

RIN 1625–AA00

Safety Zone; Rockets Over the River; Bullhead City, AZ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone, on the navigable waters of the lower Colorado River, Bullhead City, AZ, in support of the Rockets Over the River fireworks display. This safety zone is necessary to provide for the safety of the participants, crew, spectators,

participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8:30 p.m. to 10:30 p.m. on July 4, 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–2009–0070 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–2009–0070 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 the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, Coast Guard; telephone 619–278–7262, e-mail *Shane.E.Jackson@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 20, 2009 we published a notice of proposed rulemaking (NPRM) entitled ''Safety zone; Rockets Over the River; Bullhead City, Arizona,'' in the **Federal Register** (74 FR 17928). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

Background and Purpose

The Coast Guard is establishing a temporary safety zone on the navigable waters of the Lower Colorado River, Bullhead City, AZ in support of a fireworks show fired from the Arizona State Land Base near the navigational channel of the Lower Colorado River, Bullhead City, AZ. The fireworks show is being sponsored by The Laughlin Tourism Committee. The safety zone is set at a 1200 foot radius around the firing site. This temporary safety zone is necessary to provide for the safety of the show's crew, spectators, participants of the event, participating vessels, and other vessels and users of the waterway.

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.

This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed to transit through the designated safety zone during the specified times.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Colorado River from 8:30 p.m. to 10:30 p.m. on July 4, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone will only be in effect for two hours late in the evening when vessel traffic is low. Before the effective period, we will publish a Local Notice to Mariners (LNM).

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 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add new temporary zone § 165.T11–169 to read as follows:

§ 165.T11–169 Safety zone; Rockets Over the River; Bullhead City, Arizona

(a) *Location.* The limits of the safety zone are as follows: all navigable waters within 1200 feet of the Arizona State Land Base firing site in approximate position 35°09.15′ N, 114°34.07′ W.

(b) *Enforcement Period.* This section will be enforced from 8:30 p.m. to 10:30 p.m. on July 4, 2009. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: May 27, 2009.

T.H. Farris,

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

[FR Doc. E9–13774 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72, 73, 74, 77, and 78

[EPA–HQ–OAR–2008–0774; FRL–8917–6]

RIN 2060–AP35

Rulemaking To Reaffirm the Promulgation of Revisions of the Acid Rain Program Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is reaffirming the promulgation of certain revisions of the Acid Rain Program rules. These revisions have been in effect since mid-2006. Most of them are crucial to the ongoing operation of the Acid Rain Program, and the rest of them streamline and clarify requirements of the program, which has achieved significant, cost-effective reductions in sulfur dioxide (SO_2) emissions from utility sources since its commencement in 1995. These rule revisions were finalized in the **Federal Register** notices that also finalized the Clean Air

Interstate Rule (CAIR) and the final Federal Implementation Plans for CAIR (CAIR FIPs). On July 11, 2008, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision vacating and remanding CAIR and the CAIR FIPs. On December 23, 2008, in response to petitions for rehearing, the Court modified its July 11, 2008 decision and remanded CAIR and the CAIR FIPs but without a vacatur. These revisions to the Acid Rain Program rules were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these revisions as unaffected by the Court's decision. However, EPA is treating the Court's remand as covering these revisions and, in response to the remand, is finalizing the rule reaffirming—pursuant to its authority under Title IV of the Clean Air Act (CAA) and CAA section 301—the promulgation of these revisions on their merits and in order to remove any uncertainty about their regulatory status. With this action, the existing Acid Rain regulations continue in effect, and the Acid Rain Program continues to operate, unchanged and uninterrupted.

DATES: The effective date of this action is August 11, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2008–0774 (which includes by reference the dockets for CAIR and the CAIR FIPs, i.e., Docket ID Nos. EPA–HQ–OAR–2003–0053 and EPA–HQ–OAR–2004–0076). All documents in the docket are listed in the Federal Docket Management System index 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 either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA West Building, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Clean Air Markets Division, U.S. Environmental Protection Agency, Clean Air Markets Division, Mailcode: 6204J, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone (202) 343–9151, e-mail at *alpern.dwight@epa.gov.* Electronic copies of this document can be accessed through the EPA Web site at: *http://epa.gov/airmarkets.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities regulated by this action primarily are fossil fuel-fired boilers, turbines, and combined cycle units that serve generators that produce electricity for sale or cogenerate electricity for sale and steam. Regulated categories and entities include:

Category	NAICS code	Examples of potentially regulated industries
Industry	221112 and others	Electric service providers.

This table is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities, of which EPA is now aware, that could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility, company, business, organization, etc., is regulated by this action, you should carefully examine the applicability provisions in §§ 72.6, 72.7, and 72.8 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Administrative Procedures Used in This Action. This notice finalizes the promulgation of certain revisions, of the Acid Rain Program rules, that were previously promulgated and have been in effect since mid-2006 and withdraws the interim final rule (73 FR 75983 and 75959, December 15, 2008) reaffirming the promulgation of these same revisions. On December 15, 2008, EPA published in the **Federal Register** parallel notices of proposed and direct final rules reaffirming the promulgation of the non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions that were originally finalized in the **Federal Register** notices that also finalized CAIR and CAIR FIPs. 73 FR 75954 and 75983, December 15, 2008. As explained in the proposed and direct final notices, those notices provided interested persons an opportunity for public hearing and comment on the rule revisions until January 29, 2009. EPA explained that, if it received any adverse comment on the direct final notice, that notice would be withdrawn, no further opportunity for public comment would be provided, and a final rule would be issued based on the proposed notice and responding to all comments. The interim final rule would continue in effect until December 15, 2009 unless it was withdrawn on an earlier date by the direct final rule or (if the direct final rule itself was withdrawn) the final rule addressing these rule revisions. Therefore, following the receipt of an adverse comment, EPA withdrew the direct final notice (74 FR 13124, March 26, 2009).

Outline. The following outline is provided to aid in locating information in this preamble.

I. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed
II. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act

I. Acid Rain Rule Revisions Whose Promulgation Is Reaffirmed

The Acid Rain Program rule revisions whose promulgation EPA is reaffirming in this final rule are described in detail in section III of the preamble of the interim final rule (73 FR 75963–66), which also explains the merits of the revisions. The revisions are non-CAIR- and non-CAIR-FIP-related Acid Rain Program rule revisions that were originally finalized in the **Federal**

Register notices that also finalized CAIR and the CAIR FIPs. As explained in the interim final notice, the revisions have been in effect since mid-2006, most of them are crucial to the ongoing operation of the Acid Rain Program, and the rest of them streamline and clarify requirements of the program.

On July 11, 2008 (before promulgation of EPA's interim final and proposed notices), the U.S. Court of Appeals for the District of Columbia Circuit had issued a decision vacating and remanding CAIR and the CAIR FIPs. On December 23, 2008 (after interim final and proposed notices were promulgated but before the end of the comment period on the direct final notice), the Court modified its July 11, 2008 decision in response to petitions for rehearing and remanded CAIR and the CAIR FIPs but without a vacatur. These revisions to the Acid Rain Program rules were not addressed by, or involved in any of the issues raised by, any parties in the proceeding or the Court. EPA believes it is reasonable to view these revisions as unaffected by the Court's decision. However, EPA is treating the Court's remand as covering these revisions and, in response to the remand, is finalizing its reaffirmation—pursuant to its authority under Title IV of the Clean Air Act (CAA) and CAA section 301—of the promulgation of these revisions for the reasons set forth in the interim final rule preamble (73 FR 75963–66) and in order to remove any uncertainty about their regulatory status.[1]

EPA received only one comment on these revisions during the comment period for the direct final rule affirming the promulgation of the revisions. The comment, which was submitted on December 15, 2008, objected to finalization of any rules until the new administration could review them. The comment raised no substantive issues concerning any of the revisions at issue here. Having completed the requested review, EPA concludes that the promulgation of these revisions should be reaffirmed on their merits as set forth in the interim final rule (73 FR 75963–66). Further, in light of such final reaffirmation, EPA is withdrawing the interim final rule as of the effective date of this final rule. With this action, the existing Acid Rain regulations continue in effect, and the Acid Rain Program continues to operate, unchanged and uninterrupted.

[1] As noted above, the Court's disposition of CAIR and the CAIR FIPs changed—from remand with vacatur to remand without vacatur—after EPA proposed and explained the reaffirmation in the interim final and proposed notices but before the end of the comment period on the direct final notice. Moreover, the final reaffirmation in this action still is in response to a remand and based on the revisions' merits set forth in the interim final rule. EPA therefore maintains that, despite the Court's modification of its decision, the public has had a full opportunity to comment on the reaffirmation.

II. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735 (October 4, 1993)) and is therefore not subject to review under the Executive Order. In this action, EPA is simply reaffirming the promulgation of Acid Rain Program rule revisions that were previously issued and are currently in effect and have been since mid-2006.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued, does not change the existing requirements in 40 CFR Parts 72, 73, 74, 77, and 78, and thus does not change the existing information collection burden. Moreover, EPA maintains that the effect of these revisions when they were first promulgated was, if anything, to reduce somewhat the information collection burden on regulated sources, *e.g.,* by requiring compliance with the allowance-holding requirement at a source, rather than unit, level (thereby removing the need to transfer allowances among units at the same source) and by making other changes to the rules in place when the rule revisions were originally promulgated (such as removing the requirement for submission of an annual compliance certification report). In addition, the Office of Management and Budget (OMB) previously approved the information collection requirements in the existing rules under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.,* and has assigned OMB control number 2060–0258. OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the SBA's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden or otherwise has a positive economic effect on all of the small entities subject to the rule.

This rule does not change the existing Acid Rain Program rules and thus the economic impact of those rules on small entities. The rule simply reaffirms the promulgation of existing Acid Rain Program rule revisions that have been in effect since mid-2006. Moreover, the effect of these revisions when they were first promulgated was, if anything, to reduce somewhat the economic impact of the then-existing rules on all regulated sources and thus on small entities that might be, or own, regulated sources. For example, by requiring compliance on a source, rather than a unit, basis, the revisions reduced the potential for excess emissions penalties due to an inadvertent error, *e.g.*, in the owner's distribution of allowances among the units at a source that would cause one unit to have more than enough allowances to cover emissions and another unit to not have enough allowances to cover emission. As a further example, the revisions removed some requirements (*e.g.*, the required submission of an annual compliance certification report) and thereby removed some costs of compliance for all regulated sources.

We received no comment on any potential impacts of the rule on small entities or on any issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule does not change the existing Acid Rain Program rules and therefore does not result in any additional expenditures to State, local, and tribal governments or to the private sector. The rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, the effect of these revisions when they were first promulgated was, if anything, to reduce somewhat the expenditures of State, local, and tribal governments and the private sector under the then-existing Acid Rain Program rules. For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255 (Aug. 10, 1999)), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not have substantial direct effects on States, the relationship between the national government and the States, or the distribution of power and responsibilities. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249 (Nov. 9, 2000)), 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.'' This rule does not have tribal implications, as specified in Executive Order 13175. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did 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. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, entitled ''Protection of Children From Environmental Health Risks and Safety Risks'' (62 FR 19885 (Apr. 23, 1997)), applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

This rule is not subject to the Executive Order because it is not a significant regulatory action under Executive Order 12866 and is not based on health or safety risks. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions implemented certain requirements of the Acid Rain Program that were not on based on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This 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)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent

with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This rule simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not address the use of any technical standards. Thus, this rule is not subject to the NTTAA.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the level of protection provided to human health or the environment, but simply reaffirms the promulgation of Acid Rain Program rule revisions that were previously issued and that are still in effect and have been since mid-2006. Moreover, when first promulgated, these revisions did not change the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on August 11, 2009 without further notice.

List of Subjects in 40 CFR Parts 72, 73, 74, 77, and 78

Environmental protection, Acid rain, Administrative practice and procedure, Air pollution control, Electric utilities, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: June 5, 2009.

Lisa P. Jackson,

Administrator.

[FR Doc. E9–13860 Filed 6–11–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1236; MB Docket No. 08–134; RM–11466]

Television Broadcasting Services; Bismarck, ND

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a petition for rulemaking filed KBMY–KBCY, LLC, the licensee of station KBMY(TV), analog channel 17 and KBMY–DT, to substitute channel 17, its current analog channel, for its assigned post-transition DTV channel 16 at Bismarck, North Dakota.

DATES: This rule is effective June 12, 2009.

FOR FURTHER INFORMATION CONTACT: David J. Brown, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 08–134, adopted June 2, 2009, and released June 3, 2009. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW., Washington, DC 20554. This document will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs/*). (Documents will be available electronically in ASCII, Word 97, and/or Adobe Acrobat.) This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via e-mail *http://www.BCPIWEB.com.* To request this document in accessible formats (computer diskettes, large print, audio recording, and Braille), send an e-mail to *fcc504@fcc.gov* or call the Commission's Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television, Television broadcasting.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments under North Dakota, is amended by adding DTV channel 17 and removing DTV channel 16 at Bismarck.

Federal Communications Commission.

Clay C. Pendarvis,

Associate Chief, Video Division, Media Bureau.

[FR Doc. E9–13863 Filed 6–11–09; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 74, No. 112
Friday, June 12, 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 ENERGY

10 CFR Part 440

[Docket No. EEWAP0515]

RIN 1904–AB97

Weatherization Assistance Program for Low-Income Persons

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Proposed rule; extension of comment period, notice of public meeting.

SUMMARY: The U.S. Department of Energy (DOE) will be holding a public meeting on the Notice of Proposed Rulemaking (NOPR) for the Weatherization Assistance Program (WAP) published on May 21, 2009. In the NOPR, DOE proposed to amend the eligibility requirements applicable to multi-unit buildings under the Weatherization Assistance Program for Low-Income Persons. Under the proposed rule, if a multi-unit building is under the Qualified Assistance Housing Program or Public Housing Program, identified by the U.S. Department of Housing and Urban Development (HUD), and included on a list published by DOE, that building would meet certain income and benefit eligibility requirements under the Weatherization Assistance Program without the need for further evaluation or verification. Also under the proposed rule, if a multi-unit building includes units that participate in the Low Income Housing Tax Credit Program, is identified by HUD, and included on a list published by DOE, that building would meet the income eligibility requirements of the Weatherization Assistance Program without the need for further evaluation or verification. The proposed rule is intended reduce the procedural burdens on evaluating applications from buildings that are part of HUD public and assisted housing and U.S. Department of Treasury tax credit programs.

DATES: The comment period for the NOPR published at 74 FR 23804, May 21, 2009, is extended to July 6, 2009. DOE will hold a public meeting, on Thursday, June 18, 2009, from 11 a.m. to 5 p.m. EDT to discuss the WAP proposed rule. This meeting is open to the public and will also be available as a webinar/conference call.

ADDRESSES: The public meeting and webinar will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–069, 1000 Independence Avenue, SW., Washington, DC 20585–0121.

FOR FURTHER INFORMATION CONTACT: Gil Sperling, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Weatherization Assistance Program, EE–2K, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 287–1644, e-mail: *Gil.Sperling@ee.doe.gov,* or Chris Calamita, U.S. Department of Energy, Office of the General Counsel, Forrestal Building, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507, e-mail: *Christopher.Calamita@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 21, 2009, DOE published a NOPR proposing to amend the regulations for the Weatherization Assistance Program. 74 FR 23804. DOE believes that the proposed rule would reduce the procedural burdens on evaluating the eligibility of buildings that are part of HUD assisted housing and U.S. Department of Treasury tax credit programs for the purpose of the Weatherization Assistance Program.

II. Meeting Participation

DOE must receive requests to present or speak at the public meeting/webinar no later than 4 p.m., Wednesday, June 17, 2009. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting no later than 4 p.m., Tuesday, June 16, 2009. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures, requiring advance notice. If you are a foreign national and wish to participate in the public meeting, please inform DOE as soon as possible and no later than 5 p.m. Friday, June 12, 2009, by contacting Ms. Brenda Edwards at (202) 586–2945, or e-mail: *brenda.edwards@ee.doe.gov.*

The meeting is open to the public. DOE invites participation by all interested parties. For information on the agenda, bridge line and Web link for the conference call of June 18, 2009, please send an e-mail to *wxhudnopr@ee.doe.gov.* For information on facilities or services for individuals with disabilities or to request special assistance, please e-mail your request to *wxhudnopr@ee.doe.gov* by Tuesday, June 16, 2009. Please note that participants will need to be pre-cleared in advance of the meeting in order to enter the DOE headquarters building. By 4 p.m. EDT, Wednesday, June 17, 2009, e-mail *wxhudnopr@ee.doe.gov,* if you plan to attend the meeting to facilitate the pre-clearance process.

Conduct of Public Meeting: DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. Representatives from HUD will participate in the discussions. The meeting will not be a judicial or evidentiary-type public hearing. A court reporter will be present to record and transcribe the proceedings. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments about the proceedings, and any other aspect of the proposed rulemaking, by 5 p.m. EDT, Monday, July 6, 2009. The public meeting will be conducted in an informal, conference style. Each participant will be allowed to make a prepared general statement (within time limits determined by DOE) before discussion of a particular topic. DOE will permit other participants to comment briefly on any general statements. At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to the proposed rulemaking. The official conducting the public meeting will accept additional comments or

questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for proper conduct of the public meeting.

Issued in Washington, DC, on June 8, 2009.

John M. Lushetsky,

Acting Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. E9–13836 Filed 6–11–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0503; Directorate Identifier 2009–NE–12–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Model Arriel 1B, 1D, and 1D1 Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

The rupture of the Reduction Gear Box Intermediate Pinion may result in an overspeed of the Power Turbine and, subsequently, an uncommanded engine in-flight shutdown. This could lead to an emergency autorotation landing on a single-engine helicopter.

We are proposing this AD to prevent the rupture of the reduction gear box intermediate pinion, which could result in an overspeed of the power turbine, an uncommanded in-flight shutdown of the engine, and an emergency autorotation landing.

DATES: We must receive comments on this proposed AD by July 13, 2009.

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

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

Contact Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00; fax 33 05 59 74 45 15, for the service information identified in this proposed AD.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0503; Directorate Identifier 2009–NE–12–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009–0002, dated January 7, 2009, (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Several events of rupture of the Arriel 1 Reduction Gear Box Intermediate Pinion have been reported in service. The ruptures have been determined to be originated at the pinion teeth root due to increased vibratory stresses. This increase in vibratory stresses is mainly caused by increased teeth wear over engine life time.

The rupture of the Reduction Gear Box Intermediate Pinion may result in an overspeed of the Power Turbine and, subsequently, an uncommanded engine in-flight shutdown. This could lead to an emergency autorotation landing on a single-engine helicopter.

To reduce the level of vibratory stresses and improve tooth resistance, Turboméca modification incorporates the addition of a damping ring below the teeth and a shot peening of the teeth roots. These modifications reduce the risk of incipient fatigue cracks.

This AD requires the replacement of all Reduction Gear Box Intermediate Pinions with Pinions incorporating Turboméca modification TU 232.

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

Relevant Service Information

Turbomeca has issued Mandatory Service Bulletin No. 292 72 0276, Version B, dated November 6, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 13 products of U.S. registry. We also estimate that it would take about 6 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $1,272 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $22,776. Our cost estimate is exclusive of possible warranty coverage.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Turbomeca S.A.: Docket No. FAA–2009–0503; Directorate Identifier 2009–NE–12–AD.

Comments Due Date

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

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Turbomeca Arriel 1B, 1D, and 1D1 turboshaft engines. These engines are installed on, but not limited to, Eurocopter France AS350B, AS350BA, AS350B1, and AS350B2 helicopters.

Reason

(d) This AD results from several events of rupture of the Arriel 1 reduction gear box intermediate pinions. We are issuing this AD to prevent the rupture of the reduction gear box intermediate pinion, which could result in an overspeed of the power turbine, an uncommanded in-flight shutdown of the engine, and an emergency autorotation landing.

Actions and Compliance

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

(f) No later than 28 February 2011, replace the Reduction Gear Box Intermediate Pinions (P/N 0 292 70 779 0) with Pinions incorporating Turboméca modification TU 232 in accordance with Turboméca Mandatory Service Bulletin 292 72 0276 Version B dated 06 November 2008.

FAA AD Differences

(g) None.

(h) *Alternative Methods of Compliance (AMOCs):* The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Refer to MCAI EASA Airworthiness Directive 2009–0002, dated January 7, 2009, and Turbomeca Mandatory Service Bulletin No. 292 72 0276, Version B, dated November 6, 2008, for related information. Contact Turbomeca, 40220 Tarnos, France; telephone 33 05 59 74 40 00; fax 33 05 59 74 45 15, for a copy of this service information.

(j) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov*; telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on June 8, 2009.

Robert G. Mann,

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

[FR Doc. E9–13850 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112994–06]

RIN 1545–BF47

Guidance Under Section 7874 Regarding Surrogate Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Treasury Department are issuing temporary regulations concerning the treatment of a foreign corporation as a surrogate foreign corporation under section 7874(a)(2)(B) of the Internal Revenue Code (Code). The temporary regulations primarily affect domestic corporations and partnerships (and certain parties related thereto), and certain foreign corporations that acquire substantially all of the properties of such domestic corporations or partnerships. The text of the temporary regulations serves as the text of these proposed regulations.

DATES: Written or electronic comments and requests for a public hearing must be received by September 10, 2009.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–112994–06), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–112994–06), Courier's Desk, Internal Revenue

Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–112994–06).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, S. James Hawes at (202) 622–3860; concerning submissions of comments and a request for a public hearing, contact Funmi Taylor at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 7874 of the Code. The temporary regulations address certain issues relating to the treatment of a foreign corporation as a surrogate foreign corporation under section 7874(a)(2)(B). The text of the temporary regulations serves as the text of these proposed regulations, and the preamble to the temporary regulations explains these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to these regulations. These regulations do not impose a collection of information. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The complexity and cost of a transaction to which section 7874 may apply make it unlikely that a substantial number of small entities will engage in such a transaction. In addition, any economic impact to entities affected by section 7874, large or small, is derived from the operation of the statute or its intended application, not the regulations in this notice of proposed rulemaking. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested by any person who timely submits comments. If a public hearing is scheduled, notice of the date, time and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is S. James Hawes of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 USC 7805, the notice of proposed rulemaking (E6–8698) that was published in the **Federal Register** on June 6, 2006 (71 FR 32495) is withdrawn.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Section 1.7874–2 is also issued under 26 U.S.C. 7874(c)(6) and (g). * * *

Par. 2. Section 1.7874–1 is amended by revising paragraphs (e) and (g) to read as follows:

§ 1.7874–1 Disregard of affiliate-owned stock.

* * * * *

(e) [The text of the proposed amendments to § 1.7874–1(e) is the same as the text of § 1.7874–1T(e) published elsewhere in this issue of the **Federal Register**.]

* * * * *

(g) [The text of the proposed amendment to § 1.7874–1(g) is the same as the text of § 1.7874–1T(g) published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.7874–2 is added to read as follows:

§ 1.7874–2 Surrogate foreign corporation.

[The text of proposed § 1.7874–2 is the same as the text of § 1.7874–2T(a) through (o) published elsewhere in this issue of the **Federal Register**.]

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

[FR Doc. E9–13769 Filed 6–9–09; 11:15 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG–2008–0171]

RIN 1625–AA01

Anchorage Regulations; Long Island Sound

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish seven anchorage grounds in Long Island Sound. These anchorages would be located within Connecticut or New York State waters. This action is necessary to aid in facilitating the safe and secure anchorage of vessels, particularly deep draft vessels, transiting Long Island Sound or awaiting entry to a port or facility in New York and Connecticut.

DATES: Comments and related material must be received by the Coast Guard on or before August 11, 2009. Requests for public meetings must be received by the Coast Guard on or before July 13, 2009.

ADDRESSES: You may submit comments identified by docket number USCG–2008–0171 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for

Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail LT Doug Miller, Prevention Department Sector Long Island Sound, Coast Guard, telephone 203–468–4596, e-mail *Douglas.J.Miller@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0171), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–0171'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2008–0171'' in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But, you may submit a request for a public meeting on or before July 13, 2009 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The Coast Guard proposes to establish seven anchorage grounds in Long Island Sound in accordance with 33 CFR 109.05 and 110.1(b).

The Coast Guard consulted with several agencies in the development of these proposed anchorage grounds, including: The Army Corps of Engineers New England District; the Army Corps of Engineers New York District; the National Oceanic and Atmospheric Administration (NOAA); the National Marine Fisheries Service (NMFS); the Connecticut Department of Environmental Protection—Office of Long Island Sound Programs; the New York Department of State; and the New York Department of Conservation. Additionally, the licensed marine pilot organizations of both Connecticut and New York were consulted due to their extensive knowledge of the usage and need for anchorage grounds in Long Island Sound.

In determining the need for, and appropriate location of, the proposed anchorage grounds, we considered several factors, including: The commercial need for anchorage grounds; proximity to ports; safety of navigation; potential impact on commercial fishing; location of dredged material disposal sites; maritime security; environmental implications; and location of known underwater obstructions, cables, pipelines, and wrecks.

The proposed anchorage grounds are designated for general purposes, but are intended primarily for use by commercial vessels of 300 gross tons and greater and all tank vessels including tank barges. This proposed regulation would not restrict anchorage in any other area of the Sound.

Creating official anchorage areas through this rulemaking would cause more vessels to anchor in these areas, in addition to the large number that already do so, thereby providing the Captain of the Port with increased options for vessels needing to anchor while awaiting authorization to enter port. The designation of anchorage grounds would provide for the safety of navigation by providing designated locations for anchorage of deep draft vessels throughout Long Island Sound, in close proximity to the major ports of Bridgeport, New Haven, and New London, Connecticut, and Riverhead, Northport, and Port Jefferson, New York. Vessels transiting Long Island Sound would be on notice that vessels may be anchored in the anchorage grounds, thus providing for the safety of navigation. There are no cable or pipeline areas running through any of the seven proposed areas. Designation of these anchorage grounds would help guide the installation of future cables or pipelines so that they are located outside of the anchorage grounds. Keeping these areas free of underwater obstructions helps ensure safe navigation.

Recently, the U.S. Environmental Protection Agency (EPA) considered the designation of one or more open-water dredged material disposal sites in the western and central regions of Long Island Sound, off the coasts of Connecticut and New York. An Environmental Impact Statement for the

Designation of Dredged Material Disposal Sites in Central and Western Long Island Sound is available at: *http://www.epa.gov/region01/eco/lisdreg/index.html.* Two of the proposed dredged material disposal site areas are located off the coasts of Bridgeport and New Haven, Connecticut. In order to prevent disturbance of contaminated sediment, the proposed anchorage grounds off of Bridgeport and New Haven have been configured so that they are at least 1,000 yards, or one-half nautical mile, from the proposed disposal areas.

Additionally, the proposed anchorage grounds have been examined in relation to historic disposal sites. None of the proposed anchorages overlaps with a historic dredge disposal site.

The location of several submarine cables and pipelines carrying electricity and natural gas are de facto limitations on anchoring as these are hazards for vessels anchoring elsewhere in the Sound. Past anchor snags of submarine cables have interrupted use of the cable; snags also present potential hazards to the stability of vessels, as well as to the marine environment should the housing of the cable contain any environmentally harmful materials. Establishment of these anchorage grounds would provide for protection of the environment in that vessels may anchor in an area free from cables. This would provide protections against anchor strikes of submarine cables and pipelines.

We anticipate no negative impact to the fishing community, including dragging, lobster, and shellfish fishing. This proposed rule does not intend to exclude fishing activity or the transit of vessels in the anchorage grounds. Rather, the regulations would only require that all vessels maintain a distance of 500 yards from an anchored vessel that is carrying petroleum or other flammable cargo, or that is conducting bunkering or lightering operations. Such anchored vessels are readily identified as, under the proposed rule, they must display a red flag by day or a red light at night in addition to the required navigation lights and shapes. This rule would require that vessels fishing and/or transiting through the anchorages maintain that pre-established distance from said anchored vessels. We anticipate the designation of these anchorage grounds may increase the number of anchored vessels in the area; however such increase will cause only minimal interference to transiting vessels as the proposed areas have historically been utilized for anchoring. Additionally, the proposed anchorage grounds have been configured so they do not overlap with leased shellfish beds.

The NOAA Navigation Manager for the Northeast Region has provided information regarding the location of wrecks within Long Island Sound. No historical wrecked vessels are located within any of the proposed anchorage grounds.

Discussion of Proposed Rule

The proposed rule would create seven new anchorage grounds named for proximity to geographical locations. The geographic locations are described below:

(1) *Bridgeport Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°05′30″ N	73°13′30″ W; thence to
41°05′00″ N	73°11′00″ W; thence to
41°02′30″ N	73°12′18″ W; thence to
41°04′00″ N	73°16′30″ W; returning to point of origin.

(2) *New Haven North Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°12′18″ N	72°52′36″ W; thence to
41°12′18″ N	72°49′36″ W; thence to
41°10′12″ N	72°48′18″ W; thence to
41°10′12″ N	72°52′12″ W; thence to
41°11′06″ N	72°53′06″ W; returning to point of origin.

(3) *New Haven South Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°09′30″ N	72°47′48″ W; thence to
41°08′36″ N	72°47′24″ W; thence to
41°08′36″ N	72°51′24″ W; thence to
41°09′30″ N	72°51′48″ W; returning to point of origin.

(4) *New London Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°15′36″ N	072°13′36″ W; thence to
41°16′18″ N	072°10′24″ W; thence to
41°15′24″ N	072°10′06″ W; thence to
41°14′42″ N	072°13′12″ W; returning to point of origin.

(5) *Northport Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
40°58′48″ N	073°16′30″ W; thence to
40°57′42″ N	073°11′42″ W; thence to
40°56′30″ N	073°13′30″ W; thence to
40°57′36″ N	073°18′12″ W; returning to point of origin.

(6) *Port Jefferson Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°01′48″ N	073°04′54″ W; thence to
41°01′48″ N	073°00′00″ W; thence to
41°00′18″ N	073°00′00″ W; thence to
41°00′18″ N	073°04′54″ W; returning to point of origin.

(7) *Riverhead Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°03′00″ N	072°42′00″ W; thence to
41°04′00″ N	072°36′00″ W; thence to
41°02′00″ N	072°35′24″ W; thence to
41°01′24″ N	072°41′24″ W; returning to point of origin.

All coordinates referenced use datum: NAD 83.

These proposed anchorage grounds are designated for general purposes, but are primarily intended for commercial vessels of 300 gross tons and greater and all tank vessels including tank barges. Except in cases of emergencies, commercial vessels of 300 gross tons and greater and all tank vessels, including tank barges anchoring in the Captain of the Port Long Island Sound Zone inside the line of demarcation, would anchor in the anchorage grounds described above.

Prior to entering any of the proposed anchorage areas, all vessels would be required to notify the Coast Guard Captain of the Port via VHF–FM Channel 16. The Captain of the Port may prescribe specific conditions for vessels anchoring within the proposed zones described in this section, pursuant to 33 CFR 109.05.

This proposed rule would require that anchors be placed well within the anchorage areas, so that no portion of the hull or rigging will at any time extend outside of the anchorage area. All anchored vessels within the designated anchorage areas would be required to comply with the regulations in 33 CFR 164.19 and maintain a continuous bridge watch by a licensed

deck officer proficient in English, monitoring VHF–FM Channel 16. This individual would be required to confirm that the ship's crew performs frequent checks of the vessel's position to ensure the vessel is not dragging anchor.

Existing regulations at 33 CFR 156.118 require that, in anchorages where lightering is authorized, the Captain of the Port must be notified at least four hours in advance of a vessel conducting lightering operations. Under the proposed rule, any vessel conducting lightering or bunkering operations would be required to display by day a red flag at its mast head or at least 10 feet above the upper deck if the vessel has no mast, and by night a red light in the same position specified for the flag. These signals would be in addition to day signals, lights, and sound signals required to be shown or sounded by all vessels when at anchor in a general anchorage.

Within the proposed anchorages, fishing and navigation would be prohibited within 500 yards of an anchored vessel that is carrying petroleum or other flammable cargo, or that is conducting bunkering or lightering operations. Such anchored vessels are readily identified as they would be required to display a red flag by day or a red light at night in addition to the required navigation lights and shapes.

This proposed rule would prohibit a vessel from occupying an anchorage for more than 30 days, unless the vessel obtains permission from the Captain of the Port. In the event of a request for the long-term lay up of a vessel, the Captain of the Port may establish special conditions with which the vessel must comply in order for such a request to be approved.

No vessel in such condition that it is likely to sink or otherwise become a menace or obstruction to navigation or anchorage of other vessels would be allowed to occupy an anchorage, except in cases where unforeseen circumstances create conditions of imminent peril to personnel, and then only for such period as may be authorized by the Captain of the Port.

The proposed rule specifies that the Coast Guard Captain of the Port may close the anchorage area and direct vessels to depart the anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety and security. Under the proposed rule, any vessel anchored in these areas must be capable of getting underway if ordered by the Captain of the Port and must do so within 2 hours. If a vessel would not be able to get underway within 2 hours of notification, it would be required to request permission from the Captain of the Port to remain. No vessel would be allowed to anchor in a ''dead ship'' status (propulsion or control unavailable for normal operations) without prior approval from the Captain of the Port.

Finally, fixed moorings, piles or stakes are prohibited.

Regulatory Analyses

We developed this proposed 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 proposed 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.

The proposed rule is not significant because there are no fees, permits, or special requirements for the maritime industry to utilize these anchorage areas. The regulation is solely for the purpose of advancing the safety of maritime commerce. We anticipate no negative impact to the fishing community, including dragging, lobster, and shellfish fishing. This rule would not exclude fishing activity or vessel transit in the anchorage grounds. It would only require that vessels fishing and or transiting through the anchorages maintain a distance of 500 yards from an anchored vessel displaying a red flag by day or a red light by night. The Coast Guard anticipates the proposed anchorage grounds would cause minimal transit interference, by way of increased vessel anchorage, as these areas have historically been utilized for anchoring. This regulation would add to existing regulations in order to make best use of available water. Some of the proposed requirements in this regulation reflect existing regulatory requirements and many of the proposed requirements in this regulation are already practiced as a matter of prudent seamanship. Moreover, all of the regulatory changes are proposed in the interest of safe navigation and protection of the Captain of the Port zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which may be small entities: Commercial vessels wishing to transit or fish in the portions of Long Island Sound covered by this regulation. This proposed rule should have minimal economic impact on lobster fishing vessels, small commercial vessels, or recreational boaters. This conclusion is based upon the fact that the only restriction for entry or use of the proposed anchorages targeting small entities is for all vessels to maintain a distance of 500 yards from an anchored vessel displaying a red flag by day or a red light by night. The proposed regulation would only create seven new anchorage grounds. These areas historically have been, and routinely are, used for anchorage by both deep draft and smaller vessels. The proposed anchorage grounds do not interfere with or overlap existing ferry routes between Connecticut and Long Island, New York.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LT Doug Miller at (203) 468–4596 or e-mail *Douglas.J.Miller@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call 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 proposed 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 governments, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination With Indian Tribal Governments, because it would 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination under the Instruction that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of anchorages and falls under the categorical exclusion for promulgation of regulations, specifically Categorical Exclusion paragraph 34(f) of the Instruction.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. Add § 110.146 to read as follows:

§ 110.146 Long Island Sound.

(a) *Anchorage grounds.*

(1) *Bridgeport Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°05′30″ N	73°13′30″ W; thence to
41°05′00″ N	73°11′00″ W; thence to
41°02′30″ N	73°12′18″ W; thence to
41°04′00″ N	73°16′30″ W; returning to point of origin.

(2) *New Haven North Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°12′18″ N	72°52′36″ W; thence to
41°12′18″ N	72°49′36″ W; thence to
41°10′12″ N	72°48′18″ W; thence to
41°10′12″ N	72°52′12″ W; thence to
41°11′06″ N	72°53′06″ W; returning to point of origin.

(3) *New Haven South Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°09′30″ N	72°47′48″ W; thence to
41°08′36″ N	72°47′24″ W; thence to
41°08′36″ N	72°51′24″ W; thence to
41°09′30″ N	72°51′48″ W; returning to point of origin.

(4) *New London Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°15′36″ N	072°13′36″ W; thence to
41°16′18″ N	072°10′24″ W; thence to
41°15′24″ N	072°10′06″ W; thence to
41°14′42″ N	072°13′12″ W; returning to point of origin.

(5) *Northport Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
40°58′48″ N	073°16′30″ W; thence to
40°57′42″ N	073°11′42″ W; thence to
40°56′30″ N	073°13′30″ W; thence to
40°57′36″ N	073°18′12″ W; returning to point of origin.

(6) *Port Jefferson Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°01′48″ N	073°04′54″ W; thence to
41°01′48″ N	073°00′00″ W; thence to
41°00′18″ N	073°00′00″ W; thence to
41°00′18″ N	073°04′54″ W; returning to point of origin.

(7) *Riverhead Anchorage Ground.* That portion of Long Island Sound enclosed by a line connecting the following points:

Latitude	Longitude
41°03′00″ N	072°42′00″ W; thence to
41°04′00″ N	072°36′00″ W; thence to
41°02′00″ N	072°35′24″ W; thence to
41°01′24″ N	072°41′24″ W; returning to point of origin.

All coordinates referenced use datum: NAD 83.

(b) *General regulations.* (1) These anchorages are designated for general purposes, but are intended primarily for use by commercial vessels of 300 gross tons and greater and all tank vessels including tank barges. Except in cases of emergencies, commercial vessels of 300 gross tons and greater and all tank vessels, including tank barges anchoring in the Captain of the Port Long Island Sound Zone inside the line of demarcation, shall anchor in the anchorage grounds described above.

(2) Prior to entering the anchorage area, all vessels shall notify the Coast Guard Captain of the Port via VHF–FM Channel 16.

(3) In anchorages where lightering and bunkering operations are authorized, the Captain of the Port must be notified at least four hours in advance of a vessel conducting lightering or bunkering operations, as required by § 156.118 of this title. In addition, all lightering and bunkering operations must be done in accordance with § 156.120 of this title.

(4) Within an anchorage, fishing and navigation are prohibited within 500 yards of an anchored vessel that is carrying petroleum or other flammable cargo, or that is conducting bunkering or lightering operations. Such anchored vessels are readily identified as they are required to display a red flag by day or a red light at night in addition to the required navigation lights and shapes.

(5) Except as otherwise provided, a vessel may not occupy an anchorage for more than 30 days, unless the vessel obtains permission from the Captain of the Port.

(6) If a request is made for the long-term lay up of a vessel, the Captain of the Port may establish special conditions with which the vessel must comply in order for such a request to be approved.

(7) The Captain of the Port may prescribe specific conditions for vessels anchoring within the zones described in this section, pursuant to 33 CFR 109.05. These conditions may include, but are not limited to: The number and location of anchors; scope of chain; readiness of the engineering plant and equipment; use of tugs; and requirements for maintaining communication guards on selected radio frequencies.

(8) No vessel in such condition that it is likely to sink or otherwise become a menace or obstruction to navigation or anchorage of other vessels shall occupy an anchorage, except in cases where unforeseen circumstances create conditions of imminent peril to personnel, and then only for such period as may be authorized by the Captain of the Port.

(9) All vessels anchored within the designated anchorage areas shall comply with the regulations found in 33 CFR 164.19 and shall maintain a continuous bridge watch by a licensed deck officer proficient in English, monitoring VHF–FM Channel 16. This individual shall confirm that the ship's crew performs frequent checks of the vessel's position to ensure the vessel is not dragging anchor.

(10) Anchors shall be placed well within the anchorage areas so that no portion of the hull or rigging will at any time extend outside of the anchorage area.

(11) The Coast Guard Captain of the Port may close the anchorage area and direct vessels to depart the anchorage during periods of adverse weather or at other times as deemed necessary in the interest of port safety and security.

(12) Any vessel anchored in these areas must be capable of getting underway if ordered by the Captain of the Port and must do so within 2 hours, if a vessel will not be able to get underway within 2 hours of notification, permission must be requested by the Captain of the Port to remain in the anchorage. No vessel shall anchor in a ''dead ship'' status (propulsion or control unavailable for normal operations) without prior approval of the Captain of the Port.

(13) Fixed moorings, piles or stakes are prohibited.

(14) Any vessel conducting lightering or bunkering operations shall display by day a red flag (Bravo flag) at its mast head or at least 10 feet above the upper deck if the vessel has no mast, and by night a red light in the same position specified for the flag. These signals shall be in addition to day signals, lights and whistle signals required to be shown or sounded by all vessels when at anchor in a general anchorage.

Dated: 27 May 2009.

Dale G. Gabel,

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

[FR Doc. E9–13884 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0359]

RIN 1625–AA00

Safety Zone; Sabine River, Orange, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on September 19 and 20, 2009 for a portion of the Sabine River, shoreline to shoreline, adjacent to the Naval Reserve Center and the Orange public boat ramps located in Orange, TX. The northern boundary is from the end of Navy Pier One at 30°05′45″ N 93°43′24″ W then easterly to the river's eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05′33″ N. This safety zone is needed to protect spectators and vessels from potential safety hazards associated with a high speed boat race. With the exception of participating vessels and patrol craft, entry into this zone is prohibited unless specifically authorized by the Captain of the Port, Port Arthur, or a designated representative.

DATES: Comments and related material must reach the Coast Guard on or before July 13, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2009–0359 using any one of the following methods:

(1) Federal eRulemaking Portal: *http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Whalen, Marine Safety Unit Port Arthur, telephone (409) 719–5086 or e-mail *scott.k.whalen@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0359), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0359'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0359 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The City of Orange is sponsoring high speed boat races on the Sabine River in Orange, TX on September 19 and September 20, 2009. Race boats will be traveling at a very high rate of speed and at times may not be able to stop or avoid a collision if spectator or other vessels are operating in close proximity to the race course. The proposed safety zone is needed to protect the race boats, persons and spectators from the potential safety hazards associated with high speed boat races.

Discussion of Proposed Rule

The Coast Guard proposes to establish a temporary safety zone for a portion of the Sabine River, shoreline to shoreline, adjacent to the Naval Reserve Center and the Orange public boat ramps located in Orange, TX. The northern boundary is from the end of Navy Pier One at 30°05′45″ N 93°43′24″ W then easterly to the river's eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05′33″ N.

All vessels except event participants and patrol craft are prohibited from entering the safety zone unless authorized by the Captain of the Port, Port Arthur or his designated representative. For authorization to enter the proposed safety zone, vessels can contact the Captain of the Port's on scene representative on VHF Channel 16 or Vessel Traffic Service Port Arthur on VHF Channel 65A, by telephone at (409) 719–5070, or by facsimile at (409) 719–5090.

Regulatory Analysis

We developed this proposed 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 proposed 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 proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The basis of this finding is that the safety zone will only be in effect for 10 hours each day and notifications

to the marine community will be made through broadcast notice to mariners and Marine Safety Information Bulletin. During non-enforcement hours all vessels will be allowed to transit through the safety zone without permission of the Captain of the Port, Port Arthur or a designated representative. Additionally, breaks will be provided to allow waiting vessels to transit safely through the safety zone. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons: (1) This rule will only be enforced from 9 a.m. until 6 p.m. each day that it is effective; (2) during non-enforcement hours all vessels will be allowed to transit through the safety zone without having to obtain permission from the Captain of the Port, Port Arthur or a designated representative; and (3) vessels will be allowed to pass through the zone with permission of the Coast Guard Patrol Commander during scheduled break periods between races and at other times when permitted by the Coast Guard Patrol Commander.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Mr. Scott Whalen at (409) 719–5086. 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 proposed rule would call 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 proposed 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 proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule would not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of

actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary safety zone. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add new temporary § 165.T08–0359 to read as follows:

§ 165.T08–0359 Safety Zone; Sabine River, Orange, TX.

(a) *Definitions.* As used in this section Participant Vessel means all vessels officially registered with event officials to race or work in the event. These vessels include race boats, rescue boats, tow boats, and picket boats associated with the race.

(b) *Location.* The following area is a safety zone: all waters of the Sabine River, shoreline to shoreline, adjacent to the Naval Reserve Unit and the Orange public boat ramps located in Orange, TX. The northern boundary is from the end of Navy Pier One at 30°05′45″ N 93°43′24″ W then easterly to the river's eastern shore. The southern boundary is a line shoreline to shoreline at latitude 30°05′33″ N.

(c) *Effective date.* This rule is effective from 9 a.m. on September 19, 2009 until 6 p.m. on September 20, 2009.

(d) *Periods of Enforcement.* This rule will be enforced from 9 a.m. until 6 p.m. on September 19, 2009 and 9 a.m. until 6 p.m. on September 20, 2009. The Captain of the Port, Port Arthur will inform the public through broadcast notice to mariners of the enforcement periods for the safety zone.

(e) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited to all vessels except participant vessels and those vessels specifically authorized by the Captain of the Port, Port Arthur or a designated representative.

(2) Persons or vessels requiring entry into or passage through must request permission from the Captain of the Port, Port Arthur, or a designated representative. They may be contacted on VHF Channel 13 or 16, or by telephone at (409) 723–6500.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port, Port Arthur, designated representatives and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: May 5, 2009.

J.J. Plunkett,

Captain, U.S. Coast Guard, Captain of the Port, Port Arthur.

[FR Doc. E9–13775 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

RIN 3095–AB61

NARA Facility Locations and Hours

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA proposes to change the hours open to the public for our Kansas City, Missouri, and New York City regional archives. The Kansas City regional archives relocated on March 17, 2009, to the Union Station Complex at 400 West Pershing Road, Kansas City, Missouri. NARA is also proposing to shift the hours open to the public at the New York City regional archives to better serve the public for the range of hours covering the majority of visits. This proposed rule will affect the public.

DATES: Submit comments on or before August 11, 2009.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Please include ''Attn: 3095–AB61'' and your name and mailing address in your comments. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* Submit comments by facsimile transmission to 301–837–0319.
- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Jennifer Davis Heaps at 301–837–1801.

SUPPLEMENTARY INFORMATION: The location of NARA's Kansas City regional archives has changed. This document proposes to update 36 CFR Part 1253 with the new location information. Also, NARA proposes a change of hours for our Kansas City location and existing New York City location.

Kansas City, MO

NARA published a notice in the **Federal Register** on October 20, 2008 (73 FR 62340), announcing a temporary change in hours for our Kansas City regional archives to prepare for the move to the location covered in this proposed rule. On March 17, 2009, the Kansas City regional archives relocated to the Union Station Complex at 400 West Pershing Road, Kansas City, Missouri. We are proposing to revise 36 CFR 1253.7(c) to include the new address for that regional archives, as well as the new research room hours, 8 a.m.–4 p.m., Tuesday–Saturday. These hours correspond with public hours for other institutions in the Union Station/Crossroads cultural district, including the Kansas City Museum at Union Station and the National World War I Museum.

Other hours at the new Kansas City location are as follows:

- *Exhibits Galleries:* 9 a.m.–5 p.m., Tuesday–Saturday.
- *Administration and Records Management Services to Federal Agencies:* 8 a.m.–4:30 p.m., Monday–Friday.
- *Kansas City Store at the National Archives:* 10 a.m.–4 p.m., Tuesday–Saturday.

These hours, while not proposed for inclusion in § 1253.7(c) of this part, will be available on NARA's Web site, *http://www.archives.gov.*

New York, NY

NARA is also proposing to shift the hours open to the public at the New York City regional archives to better serve patrons for the range of hours the vast majority want to visit. There will be

slightly fewer hours per week but with little, if any, anticipated adverse impact upon the public. This location is currently open Monday through Friday, 8 a.m. until 4:30 p.m. and the first Saturday of each month from 8:30 a.m. until 4:30 p.m. (42.5 hours per week, plus 8 extended hours per month). Proposed new hours would be Monday through Friday, 9 a.m. until 5 p.m. and on the first Saturday of each month, 9 a.m. until 4:30 p.m. (40 hours per week, plus 7.5 extended hours per month). This change would result in a slight reduction of hours (2.5 hours per week, plus half an hour per month).

Since October 2007, the New York regional archives has had an average of less than one visitor during the hour from 8 to 9 a.m.

Date span	Number of days open	Number of days with no visitors before 9 a.m.	Average number of visitors between 8 and 9 a.m.
October 2006–September 2007	259	53	1.5
October 2007–September 2008	264	79	0.9
October 2008–February 2009	105	40	0.9

Figure 1. Public Visitors at NARA's New York Regional Archives, October 2006–February 2009.

As seen in Figure 1, from October 2007 through September 2008, New York had no visitors before 9 a.m. on just under 30 percent of the days open to the public. From October 2008 through February 2009, there were no visitors before 9 a.m. on 38 percent of the days open to the public. As a result, we do not anticipate that opening one hour later will negatively impact public use. Visitors who do arrive before 9 a.m. usually are regular researchers who remain at the facility most of the day. We also believe that remaining open until 5 p.m. will benefit those who come to us later in the day. In many cases, these visitors arrive after 4 p.m. and have been sent to our offices by other Federal agencies.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this rule applies to individual researchers. This proposed rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1253

Archives and records.

For the reasons set forth in the preamble, NARA proposes to amend part 1253 of title 36, Code of Federal Regulations, as follows:

PART 1253—LOCATIONS OF RECORDS AND HOURS OF USE

1. The authority citation for part 1253 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Amend § 1253.7 by revising paragraphs (c) and (g) as follows:

§ 1253.7 Regional Archives.

* * * * *

(c) NARA—Northeast Region (New York City) is located at 201 Varick Street, 12th Floor, New York, NY 10014–4811 (entrance on Houston Street, between Varick and Hudson). The hours are 9 a.m. to 5 p.m., Monday through Friday. The telephone number is 212–401–1620 or Toll Free 1–866–840–1752.

* * * * *

(g) NARA—Central Plains Region (Kansas City) is located at 400 West Pershing Road, Kansas City, MO 64108. The hours are 8 a.m. to 4 p.m., Tuesday through Saturday. The telephone number is 816–268–8000.

* * * * *

Dated: June 1, 2009.

Adrienne C. Thomas,

Acting Archivist of the United States.

[FR Doc. E9–14009 Filed 6–11–09; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0221; FRL–8917–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of the Cleveland-Akron-Lorain Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing several related actions affecting the Cleveland-Akron-Lorain, Ohio 8-hour ozone nonattainment area. EPA is proposing to make a determination under the Clean Air Act (CAA) that the Cleveland-Akron-Lorain nonattainment area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Cleveland-Akron-Lorain area includes Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, and Summit Counties. This determination is based on quality-assured ambient air quality monitoring data for the 2006–2008 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. EPA is also proposing to approve, as a revision to the Ohio State Implementation Plan (SIP), the State's plan for maintaining the 8-hour ozone NAAQS through 2020 in the area. EPA is proposing to approve a request from the State of Ohio to redesignate the Cleveland-Akron-Lorain area to attainment of the 8-hour ozone NAAQS. The Ohio Environmental Protection Agency (Ohio EPA) submitted this request on March 17, 2009, and supplemented it on April 24, 2009.

EPA is proposing to approve the 2002 base year emissions inventory for the Cleveland-Akron-Lorain area as meeting the requirements of the CAA. If EPA's determination that the area has attained the standard is made final, under the provisions of EPA's ozone implementation rule, the requirement to submit certain planning SIPS related to attainment, including attainment demonstration requirements (the reasonably available control measure (RACM) requirement, the reasonable further progress (RFP) and attainment demonstration requirements, and the requirement for contingency measures) are not applicable to the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. EPA is proposing to approve Ohio's 15 percent (15%) Rate of Progress (ROP) plan as meeting the requirements of the CAA for the 1-hour ozone standard. EPA is also proposing to approve a waiver, for the Cleveland-Akron-Lorain area, from the oxides of nitrogen (NO_X) requirements of section

182(f) of the CAA. Finally, EPA finds adequate and is proposing to approve the State's 2012 and 2020 Motor Vehicle Emission Budgets (MVEBs) for the Cleveland-Akron-Lorain area.

DATES: Comments must be received on or before July 13, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0221, by one of the following methods:

I. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

II. *E-mail: mooney.john@epa.gov.*

III. *Fax:* (312) 886–2551.

IV. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

V. *Hand delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0221. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of this document, ''What Should I Consider as I Prepare My Comments for EPA?''

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

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I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Proposing To Take?

EPA is proposing to take several related actions. EPA is proposing to make a determination that the Cleveland-Akron-Lorain nonattainment area has attained the 8-hour ozone standard and that this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Ohio's request to change the legal designation of the Cleveland-Akron-Lorain area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve Ohio's maintenance plan SIP revision for Cleveland-Akron-Lorain (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Cleveland-Akron-Lorain area in attainment of the ozone NAAQS through 2020. EPA is proposing to approve the 2002 base year emissions inventory for the Cleveland-Akron-Lorain area as meeting the requirements of section 182(a)(1) of the CAA. EPA is proposing to approve a waiver from the requirement for NO_X reasonably available control technology (RACT) rules in the Cleveland-Akron-Lorain area. EPA is also proposing to approve

Ohio's 15% ROP plan as meeting the requirements of section 182(b)(1) of the CAA for the 1-hour ozone standard. Additionally, if EPA's proposal to determine that the area has attained the 1997 8-hour NAAQS is finalized, pursuant to the provisions of 40 CFR 51.918, the requirement to submit certain planning SIPs related to attainment (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) are not applicable to the area as long as it continues to attain the NAAQS. (These requirements would cease to apply upon redesignation.) Finally, EPA is proposing to approve the newly established 2012 and 2020 MVEBs for the Cleveland-Akron-Lorain area. The adequacy comment period for the MVEBs began on February 18, 2009, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*). The adequacy comment period for these MVEBs ended on March 20, 2009. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. In a letter dated March 20, 2009, EPA informed Ohio EPA that we had found the 2012 and 2020 MVEBs to be adequate for use in transportation conformity analyses. Please see section VII.B. of this rulemaking, ''Adequacy of Ohio's MVEBs,'' for further explanation on this process. Therefore, we find adequate, and are proposing to approve, the State's 2012 and 2020 MVEBs for transportation conformity purposes.

III. What Is the Background for These Actions?

A. What Is the General Background Information?

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the 8-hour standard, the ozone NAAQS was based on a 1-hour standard. On November 6, 1991 (56 FR 56693 and 56813), the Cleveland-Akron-Lorain area was designated as a moderate nonattainment area under the 1-hour ozone NAAQS. The area was subsequently redesignated to attainment of the 1-hour standard on May 7, 1996 (61 FR 20454). At the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005, the Cleveland-Akron-Lorain area was designated as attainment under the 1-hour ozone NAAQS.

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million parts (ppm). On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in Title I, part D, 42 U.S.C. 7501–7509a and 7511–7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment areas.

Under EPA's implementation rule for the 1997 8-hour ozone standard, (69 FR 23951 (April 30, 2004)), an area was classified under subpart 2 based on its 8-hour ozone design value (i.e. the three-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The Cleveland-Akron-Lorain area was designated as a subpart 2, 8-hour ozone moderate nonattainment area by EPA on April 30, 2004 (69 FR 23857, 23926–23927) based on air quality monitoring data from 2001–2003 (69 FR 23860).

40 CFR 50.10 and 40 CFR part 50, Appendix I provide that the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness. See 40 CFR part 50, Appendix I, 2.3(d).

On March 17, 2009, Ohio EPA requested that EPA redesignate the Cleveland-Akron-Lorain area to attainment for the 8-hour ozone standard. The State supplemented the submittal on April 24, 2009. The redesignation request included three years of complete, quality-assured data for the period of 2006 through 2008, indicating the 8-hour NAAQS for ozone, as promulgated in 1997, had been attained for the Cleveland-Akron-Lorain area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard, and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075. EPA has not yet promulgated area designations for this standard. While both the 1997 and 2008 8-hour ozone standards are currently in place, the actions addressed in this proposed rulemaking relate only to the 1997 8-hour ozone standard.

B. What Are the Impacts of the December 22, 2006, and June 8, 2007, United States Court of Appeals Decisions Regarding EPA's Phase 1 Implementation Rule?

1. Summary of Court Decision

On December 22, 2006, in *South Coast Air Quality Management Dist.* v. *EPA,* the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). 472 F.3d 882 (D.C. Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the D.C. Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. *Id.,* Docket No. 04 1201. Therefore, several provisions of the Phase 1 Rule remain effective: Provisions related to classifications for areas currently classified under subpart 2 of Title I, part D, of the CAA as 8-hour nonattainment areas; the 8-hour attainment dates; and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS. The June 8, 2007, decision also left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8, 2007, decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four

measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) Section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8, 2007, decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation or prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

2. Requirements Under the 8-Hour Standard

With respect to the 8-hour standard, the Cleveland-Akron-Lorain area is classified under subpart 2. The June 8, 2007, opinion clarifies that the Court did not vacate the Phase 1 Rule's provisions with respect to classifications for areas under subpart 2. The Court's decision therefore upholds EPA's classifications for those areas classified under subpart 2 for the 8-hour ozone standard.

3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the Cleveland-Akron-Lorain area was an Attainment area subject to a CAA section 175A maintenance plan under the 1-hour standard. The Court's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court, in its June 8, 2007, decision, clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, the Cleveland-Akron-Lorain area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency measures (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus the decision in South Coast should not alter requirements that would preclude EPA from proposing or finalizing the redesignation of this area.

IV. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the State containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from William G. Laxton, Director Technical Support Division, June 18, 1990;

''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, November 30, 1993.

''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

V. What Is the Effect of These Actions?

Approval of the redesignation request would change the official designation of the area for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Ohio SIP a plan for maintaining the 8-hour ozone NAAQS through 2020. The maintenance plan includes contingency measures to remedy future violations of the 8-hour NAAQS. It also establishes MVEBs of 46.64 and 31.48 tons per day (tpd) VOC and 95.89 and 42.75 tpd NO_X for the years 2012 and 2020, respectively.

VI. What Is EPA's Analysis of the Request?

A. Attainment Determination and Redesignation

EPA is proposing to make a determination that the Cleveland-Akron-Lorain area has attained the 8-hour ozone standard and that the area has met all other applicable section 107(d)(3)(E) redesignation criteria. The basis for EPA's determination is as follows:

1. The Area Has Attained the 8-Hour Ozone NAAQS (Section 107(d)(3)(E)(i))

EPA is proposing to make a determination that the Cleveland-Akron-Lorain area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and part 50, Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Ohio EPA submitted ozone monitoring data for the 2006 to 2008 ozone seasons. Ohio EPA quality-assured the ambient monitoring data in accordance with 40 CFR 58.10, and recorded it in the AIRS database, thus making the data publicly available. The data meet the completeness criteria in 40 CFR Part 50, Appendix I, which requires a minimum completeness of 75 percent annually and 90 percent over each three year period. Monitoring data is presented in Table 1 below.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND THREE YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS

County	Monitor	2006 4th high (ppm)	2007 4th high (ppm)	2008 4th high (ppm)	2006–2008 average (ppm)
Ashtabula	Conneaut 39–007–1001	0.086	0.092	0.075	0.084
Cuyahoga	Cleveland 39–035–0034	0.074	0.080	0.081	0.078
	Berea 39–035–0064	0.068	0.083	0.072	0.074
	Mayfield 39–035–5002	0.081	0.080	0.083	0.081
Geauga	Cleveland 39–055–0004	0.070	0.068	0.082	0.073
Lake	Eastlake 39–085–0003	0.083	0.074	0.078	0.078
	Painsville 39–085–3002	0.075	0.079	0.076	0.076
Lorain	Sheffield 39–093–0018	0.069	0.078	0.075	0.074
Medina	Cleveland 39–103–0003	0.073	0.069	0.075	0.072
Portage	Akron 39–133–1001	0.070	0.084	0.069	0.074
Summit	Akron 39–153–0020	0.077	0.090	0.080	0.082

In addition, as discussed below with respect to the maintenance plan, Ohio EPA has committed to continue to operate an EPA-approved monitoring network as necessary to demonstrate ongoing compliance with the NAAQS. Ohio EPA commits to continue monitoring ozone at the sites indicated in Table 1. Ohio EPA also commits to consult with EPA prior to making changes to the existing monitoring network, should changes become necessary in the future. Ohio EPA remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System in accordance with Federal guidelines. In summary, EPA believes that the data submitted by Ohio provide an adequate demonstration that the Cleveland-Akron-Lorain area has attained the 8-hour ozone NAAQS, and currently available data show that the area continues to attain the standard. Should the area violate the standard before the redesignation is finalized, EPA will not go forward with the redesignation.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Ohio has met all currently applicable SIP requirements for purposes of redesignation for the Cleveland-Akron-Lorain area under section 110 of the CAA (general SIP requirements). We have also determined that the Ohio SIP meets all SIP requirements currently applicable for purposes of redesignation under part D of Title I of the CAA (requirements specific to subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, with the exception of the base year emissions inventory, certain VOC RACT regulations, and the section 182(f) NO_X exemption, we have determined that the Ohio SIP is fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is proposing to approve Ohio's 2002 base year emissions inventory and NO_X RACT waiver. In a separate action, EPA is proposing to approve Ohio's VOC RACT submittal.

In making these determinations, we have ascertained what SIP requirements are applicable to the area for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992, Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a State and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the State's submittal of a complete redesignation request for the area. See

also the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the State's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

Since EPA is proposing here to determine that the area has attained the 1997 8-hour ozone standard, under 40 CFR 51.918, if that determination is finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) would not be applicable to the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble EPA stated that:

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans * * * provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. ''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990,'' (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum at 6 (''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.'').

a. The Cleveland-Akron-Lorain Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA for Purposes of Redesignation

i. Section 110 General SIP Requirements

Section 110(a) of Title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a State must have been adopted by the State after reasonable public notice and hearing, and that, among other things, it includes enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provides for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provides for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; includes provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; includes criteria for stationary source emission control measures, monitoring, and reporting; includes provisions for air quality modeling; and provides for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a State from significantly contributing to air quality problems in another State. To implement this provision, EPA has required certain States to establish programs to address transport of air pollutants (NO_X SIP Call [1] and Clean Air Interstate Rule (CAIR) (70 FR 25162, May 12 2005)). However, the section 110(a)(2)(D) requirements for a State are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a State regardless of the designation of any one particular area in the State. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A State remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. *See* Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). *See* also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Ohio's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA, to the extent those requirements are applicable for purposes of redesignation. EPA has previously approved provisions of the Ohio SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.1870). Further, in submittals dated December 5, 2007, and September 19, 2008, Ohio confirmed that the State continues to meet the section 110 requirements for the 8-hour ozone standard. EPA has not yet taken rulemaking action on these submittals; however, such approval is not necessary for redesignation.

ii. Part D Requirements

EPA has determined that, with the approval of the base year emissions inventory and the NO_X waiver, discussed in section VII.C. of this rulemaking, and the VOC RACT submittal, discussed below under the heading ''Subpart 2 Section 182(a) and (b) Requirements,'' the Ohio SIP will

[1] On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 States to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP call, Ohio EPA has developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Ohio's rules as fulfilling Phase I of the NO_X SIP Call on August 5, 2003 (68 FR 46089) and June 27, 2005 (70 FR 36845). EPA approved Ohio's rules as meeting Phase II of the NO_X SIP call on February 4, 2008 (73 FR 6427).

meet the SIP requirements applicable for purposes of redesignation under part D of the CAA for the Cleveland-Akron-Lorain area. Under part D of the CAA, an area's classification determines the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

The Cleveland-Akron-Lorain area was classified as a moderate area under subpart 2; therefore the State must meet both the applicable requirements of subpart 1 and subpart 2 of part D. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176. The subpart 2 requirements applicable to the Cleveland-Akron-Lorain area are contained in sections 182(a) and (b) (marginal and moderate nonattainment area requirements).

Subpart 1 Section 172 Requirements.

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Cleveland-Akron-Lorain area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the areas attainment demonstration. Because attainment has been reached, no additional measures are needed to provide for attainment.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant because the Cleveland-Akron-Lorain area has demonstrated monitored attainment of the ozone NAAQS (General Preamble, 57 FR 13564). In addition, because the Cleveland-Akron-Lorain area has attained the ozone NAAQS and is no longer subject to an RFP requirement, the section 172(c)(9) contingency measures are not applicable.

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. This requirement was superseded by the inventory requirement in section 182(a)(1).

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Ohio has demonstrated that the Cleveland-Akron-Lorain area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the Cleveland-Akron-Lorain area upon redesignation to attainment. *See* rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Ohio SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

Subpart 1 Section 176 Conformity Requirements.

Section 176(c) of the CAA requires States to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if State rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida).

EPA approved Ohio's general and transportation conformity SIPs on March 11, 1996 (61 FR 9646), and May 30, 2000 (65 FR 34395), respectively. Ohio has submitted onroad motor vehicle budgets for the Cleveland-Akron-Lorain area of 46.64 and 31.48 tpd VOC and 95.89 and 42.75 tpd NO_X for the years 2012 and 2020, respectively. The area must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

Subpart 2 Section 182(a) and (b) Requirements.

As set forth in the September 4, 1992, and September 17, 1993, EPA guidance memoranda referenced in section IV of this action, ''What Are the Criteria for Redesignation?,'' only those requirements which came due prior to Ohio's submittal of a request to designate the Cleveland-Akron-Lorain area must be fully approved into the SIP before or at the time EPA approves the redesignation of the area to attainment. These requirements are discussed below.

Base Year Emissions Inventory.

Section 182(a)(1) requires the

submission of a base year emissions inventory. As part of Ohio's redesignation request for the Cleveland-Akron-Lorain area, the State submitted a 2002 base year emissions inventory. As discussed below, EPA is proposing to approve the 2002 base year inventory that Ohio submitted with the redesignation request as meeting the section 182(a)(1) emissions inventory requirement.

Emissions Statements. EPA approved Ohio's emission statement SIP, as required by section 182(a)(3)(B), on October 13, 1994 (59 FR 51863).

Reasonable Further Progress and Attainment Demonstration. On June 15, 2007, and February 22, 2008, Ohio EPA submitted an attainment demonstration and reasonable further progress plans for the Cleveland-Akron-Lorain area as required by section 182(b)(1) of the CAA. In this submittal, Ohio EPA requested that EPA act on the 15% ROP plan that was originally submitted by Ohio to meet section 182(b)(1) requirements under the 1-hour ozone standard. Because attainment has been reached, section 182(b)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard. Nevertheless, as discussed below, EPA is proposing to approve Ohio's 15% ROP plan as meeting the requirements of section 182(b)(1) of the CAA for the 1-hour ozone standard.

VOC RACT Requirements. Section 182(b)(2) requires States with moderate nonattainment areas to implement RACT under section 172(c)(1) with respect to each of the following: (1) All sources covered by a Control Technology Guideline (CTG) document issued between November 15, 1990, and the date of attainment; (2) all sources covered by a CTG issued prior to November 15, 1990; and, (3) all other major non-CTG stationary sources. As required under the 1-hour ozone standard, Ohio submitted VOC RACT rules covering the second and third categories. The EPA approved these VOC RACT rules on April 25, 1996 (61 FR 18255), September 7, 1994 (59 FR 46182), and October 23, 1995 (60 FR 54308). With respect to the first category, EPA issued CTGs for five source categories in September 2006 and three additional source categories in September 2007. Areas classified as moderate and above were required to submit VOC RACT for the source categories covered by these CTGs, by September 2007, and September 2008, respectively. Ohio submitted a SIP revision to address these CTGs on March 23, 2009. On May 7, 2009 (74 FR 21295), EPA proposed to approve Ohio's RACT submittal. Full approval of Ohio's RACT submittal is a prerequisite for approval of the redesignation of the Cleveland-Akron-Lorain area to attainment.

NO_X RACT. Section 182(f) establishes NO_X requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO_X reductions would not contribute to attainment. As discussed in section VI.E. below, we are proposing such a determination for the Cleveland-Akron-Lorain nonattainment area as requested by the State of Ohio. If the NO_X waiver is approved as a final rule, the State of Ohio need have fully approved NO_X control measures under section 182(f) for the Cleveland-Akron-Lorain area to be redesignated to attainment.

Stage II Vapor Recovery. Section 182(b)(3) requires States to submit Stage II rules no later than November 15, 1992. The EPA partially approved and partially disapproved Ohio's SIP revision for implementation of Stage II on October 20, 1994 (59 FR 52911). As stated in that rulemaking action, with the exception of paragraph 3745–21–09 (DDD)(5), EPA considers Ohio's Stage II program to fully satisfy the criteria set forth in the September 17, 1993, EPA guidance document for such programs entitled ''Enforcement Guidance for Stage II Vehicle Refueling Control Programs.'' Furthermore, the September 17, 1993, guidance memorandum states that once onboard vapor recovery regulations are promulgated, the requirement for Stage II regulations no longer applies to moderate ozone nonattainment areas. The EPA promulgated onboard vapor recovery rules in February 1994. Therefore, pursuant to section 202(a)(6) of the CAA, Stage II regulations are no longer required.

Vehicle Inspection and Maintenance (I/M). The EPA's final I/M regulations in 40 CFR part 85 require the States to submit a fully adopted I/M program by November 15, 1993. EPA approved Ohio's enhanced I/M program (E–Check), on April 4, 1995 (60 FR 16989) and January 6, 1997 (62 FR 646).

Thus, as discussed above, with approval of the base year inventory, the section 182(f) NO_X exemption, and Ohio's VOC RACT submittal, the Cleveland-Akron-Lorain area will satisfy the requirements applicable for purposes of redesignation under section 110 and part D of the CAA.

b. *The Cleveland-Akron-Lorain Area Has a Fully Approved Applicable SIP for Purposes of Redesignation Under Section 110(k) of the CAA.*

If EPA finalizes approvals of the base year emissions inventory, Ohio's VOC RACT submittal, and the section 182(f) NO_X exemption, EPA will have fully approved the Ohio SIP for the Cleveland-Akron-Lorain area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See page three of the September 4, 1992, John Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to the Cleveland-Akron-Lorain area under the 1-hour ozone standard. In this action, EPA is proposing to approve Ohio's 2002 base year emissions inventory for the Cleveland-Akron-Lorain area as meeting the requirement of section 182(a)(1) of the CAA. EPA is also proposing to approve Ohio's NO_X waiver for the Cleveland-Akron-Lorain area. In a separate action, EPA is proposing to approve Ohio's VOC RACT submission. No Cleveland-Akron-Lorain area SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA finds that Ohio has demonstrated that the observed air quality improvement in the Cleveland-Akron-Lorain area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures.

In making this demonstration, the State has calculated the change in emissions between 2002 and 2006. Ohio used the 2002 nonattainment area base year emissions inventory required under section 182(a)(1) of the CAA as the nonattainment inventory for redesignation purposes. The State developed an attainment inventory for 2006, one of the years the Cleveland-Akron-Lorain area monitored attainment. The reduction in emissions

and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Cleveland-Akron-Lorain and upwind areas have implemented in recent years.

a. *Permanent and Enforceable Controls Implemented.*

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

i. *VOC Controls.* Ohio adopted rules to limit VOC emissions from portable fuel containers and consumer and commercial products.

ii. *Automobile Inspection and Maintenance (I/M) program.* Ohio operates an enhanced automobile inspection and maintenance program in the Cleveland-Akron-Lorain area.

iii. *Stationary Source NO_X Rules.* Ohio EPA developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Ohio's rules as fulfilling Phase I of the NO_X SIP Call on August 5, 2003 (68 FR 46089,) and June 27, 2005 (70 FR 36845), and as fulfilling Phase II of the SIP call on February 4, 2008 (73 FR 6427). Beginning in 2004, this rule accounts for approximately a 31 percent reduction in statewide NO_X emissions.

iv. *Federal Emission Control Measures.* Reductions in VOC and NO_X emissions have occurred Statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include: The National Low Emission Vehicle (NLEV) program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards. In addition, on June 29, 2004 (69 FR 38958), EPA issued the Clean Air Non-road Diesel Rule, which phases in Tier 4 emissions standards over the 2008–2015 time period.

v. *Control Measures in Upwind Areas.* On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 States to reduce emissions of NO_X. The reduction in NO_X emissions has resulted in lower concentrations of transported ozone entering the Cleveland-Akron-Lorain area. Emission reductions resulting from regulations developed in response to the NO_X SIP call are permanent and enforceable.

b. *Emission Reductions.*

Ohio is using the 2002 base year inventory developed pursuant to section 182(a)(1) of the CAA as the nonattainment inventory. In developing the 2002 base year inventory, Ohio EPA provided point and area source inventories to the Lake Michigan Air Directors Consortium (LADCO). The main purpose of LADCO is to provide technical assessments for and assistance to its member States on problems of air quality. LADCO's primary geographic focus is the area encompassed by its member States (Illinois, Indiana, Michigan, Ohio and Wisconsin) and any areas which affect air quality in its member States. LADCO processed these inventories through the Emission Modeling System (EMS) to generate summer weekday emissions for VOC and NO_X. The processed modeling inventories were used for the base year inventory. The point source data provided to LADCO is a combination of EPA's EGU inventory and source-specific data reported to Ohio EPA for non-EGU sources. Area source emissions were estimated by Ohio EPA using published Emission Inventory Improvement Program methodologies or methodologies shared by other States. Ohio EPA documented the methodology used for each area source category. Nonroad mobile emissions were generated for LADCO using EPA's National Mobile Inventory Model (NMIM), with the following exceptions: recreational motorboat populations and spatial surrogates were updated; emissions estimates were developed for commercial marine vessels, aircraft, and railroads (MAR), three nonroad categories not included in NMIM; and, onroad mobile emissions were calculated using the MOBILE6.2 emissions model.

Ohio is using 2006 for the attainment year inventory. Ohio EPA developed a 2005 base year inventory, in conjunction with LADCO, using the methodology described above for base year 2002. With the exception of the onroad mobile sector, Ohio EPA used growth factors provided by LADCO to project this inventory to 2006. Onroad mobile emissions were calculated for 2006 using the MOBILE6.2 emissions model.

Using the inventories described above, Ohio's submittal documents changes in VOC and NO_X emissions from 2002 to 2006 for the Cleveland-Akron-Lorain area. Emissions data are shown in Tables 3 through 5 below.

TABLE 3—CLEVELAND-AKRON-LORAIN AREA VOC AND NO_X EMISSIONS FOR NONATTAINMENT YEAR 2002 (TPD)

	Point		Area		Nonroad		Onroad		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Ashtabula	5.58	11.46	3.31	0.51	9.77	8.99	5.78	9.60	24.44	30.56
Cuyahoga	2.19	10.76	46.90	5.90	39.95	40.28	43.68	90.55	132.72	147.49
Geauga	0.00	0.00	8.26	0.44	3.98	2.07	3.62	6.80	15.86	9.31
Lake	0.49	72.36	9.01	0.97	13.35	8.27	8.20	17.65	31.05	99.25
Lorain	2.44	58.68	11.96	0.77	13.46	13.60	9.54	20.33	37.40	93.38
Medina	0.20	0.08	6.18	0.76	3.96	4.02	7.58	16.31	17.92	21.17
Portage	0.61	0.00	6.45	0.77	5.10	5.68	6.61	14.56	18.77	21.01
Summit	1.13	3.64	18.61	2.37	9.15	11.53	24.48	50.37	53.37	67.91
Total	12.64	156.98	110.68	12.49	98.72	94.44	109.49	226.17	331.53	490.08

TABLE 4—CLEVELAND-AKRON-LORAIN VOC AND NO_X EMISSIONS FOR ATTAINMENT YEAR 2006 (TPD)

	Point		Area		Nonroad		Onroad		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Ashtabula	0.94	4.52	5.89	0.85	9.19	8.71	4.00	7.01	20.02	21.09
Cuyahoga	3.68	13.56	44.14	13.83	40.62	36.61	27.64	64.40	116.08	128.40
Geauga	0.00	0.00	9.96	1.01	4.87	2.58	2.41	5.06	17.24	8.65

TABLE 4—CLEVELAND-AKRON-LORAIN VOC AND NO_X EMISSIONS FOR ATTAINMENT YEAR 2006 (TPD)—Continued

	Point		Area		Nonroad		Onroad		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Lake	0.82	37.48	9.06	2.30	11.13	8.99	5.33	13.00	26.34	61.77
Lorain	3.18	27.31	11.45	2.66	13.03	12.84	6.17	14.88	33.83	57.69
Medina	0.79	0.26	7.40	1.57	5.29	5.02	5.05	12.32	18.53	19.17
Portage	0.95	0.22	6.19	1.52	7.49	6.25	4.30	10.79	18.93	18.78
Summit	1.27	3.23	18.17	5.51	12.36	11.33	14.18	34.28	45.98	54.35
Total	11.63	86.58	92.32	29.25	57.67	92.33	69.08	161.74	296.95	369.90

TABLE 5—COMPARISON OF CLEVELAND-AKRON-LORAIN 2002 AND 2006 VOC AND NO_X EMISSIONS (TPD)

	VOC			NO_X		
	2002	2006	Net change (2002–2006)	2002	2006	Net change (2002–2006)
Point	12.64	11.63	−1.01	156.98	86.58	−70.40
Area	110.68	92.32	−18.36	12.49	29.25	16.76
Nonroad	98.72	57.67	−41.05	94.44	92.33	−2.11
Onroad	109.49	69.08	−40.41	226.17	161.74	−64.43
Total	331.53	296.95	−34.58	490.08	369.90	−120.18

Table 5 shows that the Cleveland-Akron-Lorain area reduced VOC emissions by 34.58 tpd and NO_X emissions by 120.18 tpd between 2002 and 2006. Based on the information summarized above, Ohio has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175a of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with its request to redesignate the Cleveland-Akron-Lorain nonattainment area to attainment status, Ohio submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the area through 2020.

a. *What Is Required in a Maintenance Plan*?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum clarifies that an ozone maintenance plan should address the following items: The attainment VOC and NO_X emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. *Attainment Inventory.*

The Ohio EPA developed an emissions inventory for 2006, one of the years Ohio used to demonstrate monitored attainment of the 8-hour NAAQS, as described above. The attainment level of emissions is summarized in Table 4, above.

c. *Demonstration of Maintenance.*

Along with the redesignation request, Ohio submitted a revision to the 8-hour ozone SIP to include a maintenance plan for the Cleveland-Akron-Lorain area, in compliance with section 175A of the CAA. This demonstration shows maintenance of the 8-hour ozone standard through 2020 by assuring that current and future emissions of VOC and NO_X for the Cleveland-Akron-Lorain area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Ohio is using emissions inventories for the years 2012 and 2020 to demonstrate maintenance. Onroad emissions for 2012 and 2020 were calculated using the MOBILE6.2 emissions model. Emissions estimates for the remaining source categories were based on future year inventories developed by LADCO for the years 2012 and 2018. With the exception of MAR, nonroad emissions for these years were estimated using NMIM. MAR emissions were derived by applying growth and control factors to the 2005 inventory. Area source and point source emissions were derived by applying growth and control factors to the 2005 inventory. EGU emissions estimates assume no credit for implementation of CAIR in the area. To derive 2020 emissions estimates, Ohio EPA applied LADCO growth factors to the 2018 LADCO inventory.

Ohio is in the process of revising its State rules for its Best Available Technology (BAT) minor source permitting program. As discussed above, a State can demonstrate maintenance of the standard by showing that future emissions of VOC and NO_X for the area remain at or below attainment year emission levels. Ohio EPA's emissions projections for this maintenance plan assume no emissions benefits from implementation of the

BAT program. The LADCO growth factors used to project future emissions were developed using techniques consistent among the LADCO States and assume implementation of no minor source permitting programs for any State, including Ohio. The emission projections show that Ohio EPA does not expect emissions in the Cleveland-Akron-Lorain area to exceed the level of the 2006 attainment year inventory during the maintenance period. Ohio's maintenance plan demonstrates that the area can maintain the standard through 2020 applying standard growth factors and without the BAT program. EPA believes that Ohio has provided adequate demonstration of maintenance, and that any changes to the BAT program should not impact the Cleveland-Akron-Lorain area's ability to attain or maintain the 1997 8-hour ozone NAAQS. Therefore, the issues associated with the BAT program are not being considered for purposes of this redesignation. Nothing in this rule or redesignation is intended to affect the SIP approvability or non-approvability of any revised Ohio BAT rules, and EPA will evaluate the approvability of such rules when Ohio submits them. Emissions data are shown in Table 6 below.

TABLE 6—CLEVELAND-AKRON-LORAIN AREA VOC AND NO_X EMISSIONS FOR 2006, 2012 AND 2020 (TPD)

	VOC					NO_X				
	2006	2012	2020	Net change 2006–2012	Net change 2006–2020	2006	2012	2020	Net change 2006–2012	Net change 2006–2020
Point	11.63	12.90	15.01	1.27	3.38	86.58	73.19	71.79	−13.39	−14.79
Area	112.26	96.18	92.63	−16.08	−19,63	29,25	29.58	29.71	0.33	0.46
Nonroad	103.98	77.12	76.99	−26.86	−26.99	92.33	69.65	44.06	−22.68	−48.27
Onroad	69.08	40.56	27.38	−28.52	−41.70	161.74	83.36	37.66	−78.38	−124.08
Total	296.95	226.76	212.01	−70.19	−84.94	369.90	255.78	183.22	−114.12	−186.68

The emission projections show that Ohio EPA does not expect emissions in the Cleveland-Akron-Lorain area to exceed the level of the 2006 attainment year inventory during the maintenance period. In the Cleveland-Akron-Lorain area, Ohio EPA projects that VOC and NO_X emissions will decrease by 84.94 tpd and 186.68 tpd, respectively, between 2006 and 2020.

In addition, LADCO performed a regional modeling analysis to address the effect of the recent court decision vacating CAIR. This analysis is documented in LADCO's ''Regional Air Quality Analyses for Ozone, PM2.5, and Regional Haze: Final Technical Support Document (Supplement), September 12, 2008.'' LADCO produced a base year inventory for 2005 and future year inventories for 2009, 2012, and 2018. To estimate future EGU NO_X emissions without implementation of CAIR, LADCO projected 2007 EGU NO_X emissions for all States in the modeling domain based on Energy Information Administration growth rates by State (North American Electric Reliability Corporation (NERC) region) and fuel type for the years 2009, 2012 and 2018. The assumed 2007–2018 growth rates were 8.8% for Illinois, Iowa, Missouri and Wisconsin; 13.5% for Indiana, Kentucky, Michigan and Ohio; and 15.1% for Minnesota. Emissions were adjusted by applying legally enforceable controls, *e.g.,* consent decree or rule. EGU NO_X emissions projections for the States of Illinois, Indiana, Michigan, Ohio, and Wisconsin are shown below in Table 7. The emission projections used for the modeling analysis do not account for certain relevant factors such as allowance trading and potential changes in operation of existing control devices. The NO_X projections indicate that, due to the NO_X SIP call, certain State rules, consent decrees resulting from enforcement cases, and ongoing implementation of a number of mobile source rules, EGU NO_X is not expected to increase in Ohio or any of the States in the immediate region, and overall NO_X emissions in Ohio and the nearby region are expected to decrease substantially between 2005 and 2020.[2] Total NO_X emissions projections are shown in Table 8, below.

TABLE 7—EGU NO_X EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR 2007, 2009, 2012, AND 2018

	2007	2009	2012	2018
EGU	1,582	1,552	1,516	1,524

TABLE 8—TOTAL NO_X EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR THE YEARS 2005, 2009, 2012, AND 2018

	2005	2009	2012	2018
Total NO_X	8,260	6,778	6,076	4,759

Given that 2007 is one of the years Ohio used to demonstrate monitored attainment of the 8-hour NAAQS, Table 7 shows that EGU NO_X emissions will remain below attainment levels through 2018. If the rate of emissions increase

[2] There is more uncertainty about the use of SO_2 allowances and future projections for SO_2 emissions; thus, further review and discussion will be needed regarding the appropriateness of using these emission projections for future PM2.5 SIP approvals and redesignation requests.

between 2012 and 2018 continues through 2020, EGU NO_X emissions would still remain below attainment levels in 2020. Furthermore, as shown in Table 8, total NO_X emissions clearly continue to decrease substantially throughout the maintenance period.

Ozone modeling performed by LADCO using this emissions data supports the conclusion that the Cleveland-Akron-Lorain area will maintain the standard throughout the maintenance period. Peak modeled ozone levels in the area for 2009, 2012 and 2018 are 0.084 ppm, 0.081 ppm, and 0.078 ppm, respectively. These projected ozone levels were modeled applying only legally enforceable controls; *e.g.,* consent decrees, rules, the NO_X SIP call, Federal motor vehicle control programs (FMVCP), *etc.* Because these programs will remain in place, emission levels, and therefore ozone levels, would not be expected to increase significantly between 2018 and 2020. Given that projected emissions and modeled ozone levels continue to decrease substantially through 2018, it is reasonable to infer that a 2020 modeling run would also show levels well below the 1997 8-hour ozone standard.

As part of its maintenance plan, the State elected to include a ''safety margin'' for the area. A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan which continues to demonstrate attainment of the standard. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The Cleveland-Akron-Lorain area attained the 8-hour ozone NAAQS during the 2006–2008 time period. Ohio used 2006 as the attainment level of emissions for the area. In the maintenance plan, Ohio EPA projected emission levels for 2020. For the Cleveland-Akron-Lorain area, the emissions from point, area, nonroad, and mobile sources in 2006 equaled 296.85 tpd of VOC. Ohio EPA projected VOC emissions for the year 2020 to be 212.01 tpd of VOC. The SIP submission demonstrates that the Cleveland-Akron-Lorain area will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 84.946 tpd of VOC for 2020. By this same method, 186.68 tpd (*i.e.,* 369.90 tpd less 183.22 tpd) is the safety margin for NO_X for 2020. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

d. Monitoring Network.

Ohio currently operates eleven ozone monitors in the Cleveland-Akron-Lorain area. Ohio EPA has committed to continue to operate these ozone monitors. Further, Ohio EPA commits to consult with EPA prior to making changes to the existing monitoring network, should changes become necessary in the future. Ohio EPA remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System in accordance with Federal guidelines.

e. Verification of Continued Attainment.

Continued attainment of the ozone NAAQS in the Cleveland-Akron-Lorain area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. Ohio's plan for verifying continued attainment of the 8-hour standard in the Cleveland-Akron-Lorain area consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. Ohio EPA will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions.

f. Contingency Plan.

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the State. The State should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the State will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted a contingency plan for the Cleveland-Akron-Lorain area to address possible future ozone air quality problems. The contingency plan adopted by Ohio has two levels of response, depending on whether a violation of the 8-hour ozone standard is only threatened (warning level response) or has occurred (action level response).

A warning level response will be triggered when an annual fourth high monitored value of 0.088 ppm or higher is monitored within the maintenance area. A warning level response will consist of Ohio EPA conducting a study to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

An action level response will be triggered when a two-year average fourth high value of 0.085 ppm is monitored within the maintenance area. A violation of the standard (a three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration of 0.085 ppm or greater) also triggers an action level response. When an action level response is triggered, Ohio EPA will determine what additional control measures are needed to assure future attainment of the ozone standard. Control measures selected will be implemented within 18 months from the close of the ozone season that prompted the action level. Ohio EPA will also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute a response.

Ohio EPA included the following list of potential contingency measures in the maintenance plan:

i. Lower Reid vapor pressure gasoline program;

ii. Tighten RACT on existing sources covered by CTGs issued in response to the 1990 CAA;

iii. One or more transportation control measures sufficient to achieve at least half a percent reduction in actual area wide VOC emissions;

iv. Alternative fuel and diesel retrofit programs for fleet vehicle operations;

v. Require VOC or NO_X emission offsets for new and modified major sources;

vi. Require VOC or NO_X emission offsets for new and modified minor sources;

vii. Increase the ratio of emission offsets required for new sources;

viii. Require VOC or NO_X controls on new minor sources (less than 100 tpy); and

ix. Adopt NO_X RACT for existing combustion sources.

g. Provisions for Future Updates of the Ozone Maintenance Plan.

As required by section 175A(b) of the CAA, Ohio commits to submit to the EPA an updated ozone maintenance plan eight years after redesignation of the Cleveland-Akron-Lorain area to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175(A) of the CAA, Ohio has committed to retain the VOC and NO_X control measures contained in the SIP prior to redesignation.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Ohio for the Cleveland-Akron-Lorain area meets the requirements of section 175A of the CAA.

B. Adequacy of Ohio's MVEBs

1. How Are MVEBs Developed and What Are the MVEBs for the Cleveland-Akron-Lorain Area?

Under the CAA, States are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard. These emission control strategy SIP revisions (*e.g.,* reasonable further progress SIP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.,* be consistent with) the part of the SIP that addresses emissions from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by State and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and (3) EPA's finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was codified in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM 2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Cleveland-Akron-Lorain area's maintenance plan contains new VOC and NO_X MVEBs for the years 2012 and 2020. The availability of the SIP submission with these 2012 and 2020 MVEBs was announced for public comment on EPA's Adequacy Web site on February 18, 2009 at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm.* The EPA public comment period on adequacy of the 2012 and 2020 MVEBs for the Cleveland-Akron-Lorain area closed on March 20, 2009. No requests for this submittal or adverse comments on the submittal were received during the adequacy comment period. In a letter dated March 30, 2009, EPA informed Ohio EPA that we had found the 2012 and 2020 MVEBs to be adequate for use in transportation conformity analyses.

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in the Cleveland-Akron-Lorain area because EPA has determined that the area can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. Ohio EPA has determined the 2012 MVEBs for the Cleveland-Akron-Lorain area to be 46.64 tpd for VOC and 95.89 tpd for NO_X. Ohio EPA has determined the 2020 MVEBs for the area to be 31.48 tpd for VOC and 42.75 tpd for NO_X. These MVEBs are consistent with the onroad mobile source VOC and NO_X emissions projected by Ohio EPA for 2012 and 2020, as summarized in Table 6 above. Ohio has demonstrated that the Cleveland-Akron-Lorain area can maintain the 8-hour ozone NAAQS with mobile source emissions of 46.64 tpd and 31.48 tpd of VOC and 95.89 tpd and 42.75 tpd of NO_X in 2012 and 2020, respectively, since emissions will remain under attainment year emission levels.

2. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 6, the Cleveland-Akron-Lorain area emissions are projected to have safety margins of 70.19 tpd for VOC and 114.12 tpd for NO_X in 2012 (the difference between the attainment year, 2006, emissions and the projected 2012 emissions for all sources in the Cleveland-Akron-Lorain area). For 2020, the Cleveland-Akron-Lorain area emissions are projected to have safety margins of 84.94 tpd for VOC and 186.68 tpd for NO_X. Even if emissions reached the full level of the safety

margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

The MVEBs requested by Ohio EPA contain safety margins for mobile sources smaller than the allowable safety margins reflected in the total emissions for the Cleveland-Akron-Lorain area. The State is not requesting allocation of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the State is requesting MVEBs that exceed the projected onroad mobile source emissions for 2012 and 2020 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

C. 2002 Base Year Emissions Inventory

As discussed above, section 182(a)(1) of the CAA requires areas classified as marginal and above to submit a base year emissions inventory. As part of Ohio's redesignation request for the Cleveland-Akron-Lorain area, the State submitted a 2002 base year emissions inventory. This inventory is discussed above and summarized in Table 3. EPA is proposing to approve this 2002 base year inventory as meeting the section 182(a)(1) emissions inventory requirement.

D. 15% ROP Plan

On June 15, 2007, and February 22, 2008, Ohio EPA submitted an attainment demonstration and reasonable further progress plans for the Cleveland-Akron-Lorain area as required by section 182(b)(1) of the CAA. In those submittals, Ohio EPA requested that EPA act on the 15% ROP plan that was originally submitted by Ohio to meet section 182(b)(1) requirements under the 1-hour ozone standard. The 1-hour ozone 15% ROP plan was originally submitted on March 14, 1994, and supplemented on June 9, 1995. Because the area subsequently attained the 1-hour ozone standard, EPA redesignated the area on May 7, 1996 and did not take action on the 15% ROP plan.

As discussed in greater detail below, EPA has evaluated Ohio's 15% ROP plan and has found it to be consistent with section 182(b)(1) of the CAA and EPA policy documents. Therefore, we are proposing to approve Ohio's 15% plan as meeting the 182(b)(1) requirements for the Cleveland-Akron-Lorain area under the 1-hour ozone standard. Approval of Ohio's 1-hour ozone 15% ROP plan is not required for purposes of the 8-hour redesignation. However, because the plan meets the requirements of the CAA and may be helpful in future implementation of ozone standards, we are acting on the State's request to approve this plan.

1. Review Criteria

Section 182(b)(1) of the CAA requires that the ROP plan provide for a 15% reduction from baseline VOC emissions in the ozone nonattainment area, accounting for any growth in emissions after 1990. This emission reduction must be achieved within six years after the date of the enactment of the 1990 Clean Air Act revisions (by November 15, 1996).

The CAA defines the baseline emissions to be the total amount of actual VOC emissions from all anthropogenic sources in the area during the calendar year of 1990, excluding emissions that would be eliminated under Federal Motor Vehicle Control Program (FMVCP) measures promulgated by the EPA by January 1, 1990, and any gasoline Reid Vapor Pressure (RVP) regulations promulgated by EPA by November 15, 1990, or required to be promulgated under section 211 of the CAA.

Section 182(b)(1) of the CAA allows emission reductions to be creditable except for the RVP and FMVCP emission reductions mentioned above, any emission reductions from measures resulting from EPA-required corrections to motor vehicle Inspection and Maintenance (I/M) programs required to be submitted immediately after enactment of the 1990 Clean Air Act revisions, and emission reductions resulting from EPA-required corrections to the State VOC RACT rules that were required by section 182(a)(2)(A) of the CAA concerning RACT fix-up requirements. In general, VOC emission reductions are creditable toward the ROP emission reduction requirement to the extent that they have actually occurred, as of six years after November 15, 1990, resulting from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator (EPA), or a permit issued under Title V of the CAA.

2. Review of the 15% VOC-Only ROP Plan for the Cleveland-Akron-Lorain, OH 1-Hour Ozone Nonattainment Area

a. Calculation of the Adjusted Base Year Inventory.

The CAA specifies the emission baseline from which the 15% VOC-only reduction is calculated. This baseline value is termed the 1990 adjusted base year inventory. Section 182(b)(1)(D) of the CAA excludes from the baseline the emissions that would be eliminated by FMVCP regulations promulgated by January 1, 1990, and RVP regulations (55 FR 23666, June 11, 1990) promulgated by EPA prior to November 15, 1990.

The adjusted base year inventory is determined by starting with the 1990 base year emission inventory, and then removing all biogenic emissions as well as emissions from sources located outside of the designated nonattainment boundary. (The 1990 base year emissions inventory was submitted to the EPA on March 14, 1994, at the same time that the 15% VOC-only ROP plan was submitted for the Cleveland-Akron-Lorain, OH 1-hour ozone nonattainment area.) The resulting inventory is termed the 1990 ROP base year inventory. The 1990 ROP base year inventory is then adjusted by removing the expected FMVCP and RVP reductions to derive the adjusted base year inventory. These calculations are summarized in Table 7, below, and result in an adjusted base year inventory of 366.97 tpd VOC.

b. Required VOC Emission Reductions.

The 1990 adjusted base year inventory is multiplied by 0.15 to calculate 15% of the adjusted base year emissions. Therefore, to meet the ROP requirement, Ohio's plan must provide for at least a 55.05 tpd reduction in VOC emissions (366.97 tpd VOC multiplied by 0.15), in addition to the reduction needed to offset growth.

As noted above, under section 182(b)(1)(D) of the CAA, the following reductions are not creditable toward the ROP reductions: (1) FMVCP regulations promulgated by January 1, 1990; (2) RVP regulations promulgated by EPA before enactment of the 1990 Clean Air Act Amendments; (3) certain corrections to VOC RACT rules and; (4) corrections to basic automobile I/M programs. Thus, the total expected reductions are comprised of the reductions necessary to meet the ROP requirement and the expected emissions reductions from the four noncreditable programs. The total expected emissions reductions are 171.87 tpd VOC (55.05 tpd + 109.06 tpd FMVCP & RVP reductions + 7.76 tpd RACT & I/M corrections reductions).

The amount of reduction necessary to meet the contingency plan requirement is 3% of the adjusted base year inventory. Therefore, to meet the contingency requirement, the State's plan must provide for at least 11.01 tpd

reduction in VOC emissions (366.97 tpd VOC multiplied by 0.03). The 1996 target level of VOC emissions is 304.16 tpd, the 1990 ROP base year inventory minus the total expected emission reductions (476.03 tpd − 171.87 tpd).

c. Projected Emission Inventory.

Emission projections are needed to determine if the ROP requirements in the CAA are met. Growth factors are not included in the calculations of the 1990 adjusted base year inventory or the 1996 target level of emissions. Growth factors are needed, however, to project emissions to 1996 for the ROP demonstration as part of the ROP plan.

Ohio calculated point source emissions growth based on earnings data obtained from the Bureau of Economic Analysis. Area source emissions were projected based on population, industrial employment, and State gasoline consumption growth. For mobile source emissions, a travel demand model was run to estimate 1996 VMT. Total 1996 VOC emissions including growth were estimated to be 373.00 tpd.

d. Total VOC Emission Reductions Necessary To Meet the 15% VOC-Only ROP Requirement.

The required VOC emissions reduction to meet the 15% ROP requirements is 68.84 tpd. This is the difference between the projected 1996 emissions with growth and no additional controls, and the 1996 target level of emissions (373.00 tpd VOC − 304.16 tpd VOC).

Provided in Table 9 is a summary of the results of the emissions calculations used to determine the required 15% VOC-only ROP plan reductions.

TABLE 9—SUMMARY OF CALCULATIONS USED TO DETERMINE THE VOC REDUCTIONS NEEDED BY 1996 FOR THE CLEVELAND-AKRON-LORAIN AREA TO MEET THE 15% VOC-ONLY ROP REDUCTION REQUIREMENT

	VOC emissions (tpd)
1990 Base Year Emissions Inventory	681.00
1990 ROP Base Year Emissions Inventory (nonattainment area anthropogenic only)	476.03
Noncreditable Emission Reductions from FMVCP and RVP	109.06
1990 Adjusted Base Year Inventory (1990 ROP Base Year Inventory minus RVP and FMVCP)	366.97
15% of Adjusted Base Year Emissions	55.05
Noncreditable Emission Reductions from Corrections to VOC RACT Rules and the Basic I/M Program	7.76
Total Expected Emission Reductions by 1996 (FMVCP & RVP + 15% + RACT & I/M corrections)	171.87
1996 Target Level of Emissions (1990 ROP Base Year Inventory minus total expected emission reductions by 1996)	304.16
Estimated 1996 Emissions (Anthropogenic), including growth	373.00
Required Reductions by 1996 to Meet the 15% ROP Requirements (Estimated 1996 emissions minus 1996 target level of emissions)	68.84
3% Contingency Plan Reduction	11.01

e. Control Measures.

The control measures adopted by Ohio to achieve a 69.77 tpd reduction in VOC emissions are listed in Table 10, below. The table does not include any Federal measures used to reduce the mobile source emissions. These reductions are already accounted for in the MOBILE5a emissions model that, in combination with the projected VMT for the area, was used to estimate the future emissions for the area.

TABLE 10—SUMMARY OF CONTROL MEASURES SELECTED BY THE STATE TO ACHIEVE THE 15% VOC-ONLY ROP REDUCTIONS FOR THE CLEVELAND-AKRON-LORAIN AREA

Control measure used to meet ROP	VOC emissions reductions (tpd)
Stage II gasoline vapor recovery	8.43
Enhanced I/M	37.92
NESHAP	3.42
Enforcement cases	9.79
Architectural coatings	6.7
Removal of 100 ton per year cutoff	0.69
Transportation control measures	2.82
Total Emission Reductions	69.77
Contingency Emissions Reduction (lower RVP fuel)	13.03

Overall, Ohio's ROP plan provides for a 69.77 tpd VOC emissions reduction, which meets the ROP requirements. The contingency plan provides for the necessary 3% emission reduction.

E. Section 182(f) NO_X Exemption

Section 182(f) establishes NO_X emission control requirements for ozone nonattainment areas. It provides that these emission control requirements, however, do not apply to an area if the Administrator determines that NO_X emission reductions would not contribute to attainment of the ozone standard. EPA's January 2005 document, ''Guidance on Limiting Nitrogen Oxides Requirements Related to 8-Hour Ozone Implementation,'' provides guidance for demonstrating that further NO_X reduction in an ozone nonattainment area will not contribute to ozone attainment. The guidance provides that three consecutive years of monitoring data showing attainment of

the standard without implementation of section 182(f) NO_X provisions is adequate to demonstrate that ''additional reductions of oxides of nitrogen would not contribute to attainment * * *.'' CAA section 182(f)(1)(A). As described in the guidance document, approval of this type of NO_X exemption is contingent on continued monitored attainment of the standard.

On March 17, 2009, Ohio submitted a request for a waiver from the section 182(f) NO_X requirements for the Cleveland-Akron-Lorain area based on monitoring data for the years 2006–2008 showing attainment of the 8-hour ozone standard in the area. Based on these data, EPA is proposing to approve Ohio's request for an exemption from the section 182(f) NO_X requirements in the Cleveland-Akron-Lorain area. Upon final approval of the NO_X waiver, the Ohio EPA will not be required to adopt and implement NO_X emission control regulations pursuant section 182(f) for Cleveland-Akron-Lorain area to qualify for redesignation. The waiver request notwithstanding, Ohio EPA submitted NO_X RACT rules to EPA on January 3, 2008, and has included NO_X RACT in the list of contingency measures in the maintenance plan for the area.

Furthermore, as discussed in section III.A. of this rule, EPA promulgated a tightened ozone standard on March 27, 2008. Ohio has recommended that the Cleveland-Akron-Lorain area be designated nonattainment for this standard. Although EPA is proposing to determine that NO_X reductions would not contribute to attainment of the 1997 ozone standard because the area already attains that standard, EPA believes that NO_X reductions may contribute to attainment of the 2008 standards. Indeed, while EPA proposes that Ohio need not adopt NO_X RACT rules as a prerequisite for redesignation with respect to the 1997 standards, it would not prevent EPA in the future from determining that NO_X RACT rules should be required in this area with respect to the 2008 standards.

VII. What Action Is EPA Taking?

EPA is proposing to make a determination that the Cleveland-Akron-Lorain area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the Cleveland-Akron-Lorain area. EPA's proposed approval of the maintenance plan is based on Ohio's demonstration that the plan meets the requirements of section 175A of the CAA, as described more fully above. After evaluating Ohio's redesignation request, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve the redesignation of the Cleveland-Akron-Lorain area from nonattainment to attainment for the 8-hour ozone NAAQS. The final approval of this redesignation request would change the official designation for the Cleveland-Akron-Lorain area from nonattainment to attainment for the 8-hour ozone standard. EPA is also proposing to approve the 2002 base year emissions inventory for the Cleveland-Akron-Lorain area as meeting the requirements of section 182(a)(1) of the CAA. EPA is proposing to approve a waiver from the section 182(f) NO_X emission control requirements in the Cleveland-Akron-Lorain area. EPA is also proposing to approve Ohio's 15% ROP plan as meeting the requirements of section 182(b)(1) of the CAA for the 1-hour ozone standard. If EPA's determination of attainment is finalized, pursuant to 40 CFR 51.918, certain SIP planning requirements related to attainment (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) are not applicable to the area as long as it continues to attain the NAAQS. (These requirements would cease to apply upon redesignation.) Finally, EPA is proposing to approve the newly-established 2012 and 2020 MVEBs for the Cleveland-Akron-Lorain area.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: June 4, 2009.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–13853 Filed 6–11–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R05–OAR–2009–0220; FRL–8917–8]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of the Columbus Area to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing several related actions affecting the Columbus, Ohio area. EPA is proposing to make a determination under the Clean Air Act (CAA) that the Columbus 1997 8-hour ozone nonattainment area has attained the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Columbus area includes Delaware, Fairfield, Franklin, Knox, Licking, and Madison Counties. This determination is based on quality-assured ambient air quality monitoring data for the 2006–2008 ozone seasons that demonstrate that the 8-hour ozone NAAQS has been attained in the area. EPA is proposing to approve, as a revision to the Ohio State Implementation Plan (SIP), the State's plan for maintaining the 8-hour ozone NAAQS through 2020 in the area. EPA is proposing to approve a request from the State of Ohio to redesignate the Columbus area to attainment of the 8-hour ozone NAAQS. The Ohio Environmental Protection Agency (Ohio EPA) submitted this request on March 17, 2009.

EPA is proposing to approve the 2002 base year emissions inventory for the Columbus area as meeting the requirements of the CAA. If EPA's determination of attainment is finalized, under EPA's ozone implementation rulemaking the requirements to submit certain planning SIPs related to attainment (the Reasonably Available Control Measure (RACM) requirement, the reasonable further progress (RFP) and attainment demonstration requirements, and the requirement for contingency measures) are not applicable to the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. Finally, EPA finds adequate and is proposing to approve the State's 2012 and 2020 Motor Vehicle Emission Budgets (MVEBs) for the Columbus area.

DATES: Comments must be received on or before July 13, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0220, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–2551.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2009–0220. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to section I of this document, ''What Should I Consider as I Prepare My Comments for EPA?''

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Kathleen D'Agostino, Environmental Engineer, at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

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I. What Should I Consider as I Prepare My Comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

II. What Action Is EPA Proposing to Take?

EPA is proposing to take several related actions. EPA is proposing to make a determination that the Columbus nonattainment area has attained the 8-hour ozone standard and that this area has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. EPA is thus proposing to approve Ohio's request to change the legal designation of the Columbus area from nonattainment to attainment for the 8-hour ozone NAAQS. EPA is also proposing to approve Ohio's maintenance plan SIP revision for Columbus (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to keep the Columbus area in attainment of the ozone NAAQS through 2020. EPA is proposing to approve the 2002 base year emissions inventory for the Columbus area as meeting the requirements of section 172(c)(3) of the CAA. If EPA's determination of attainment is finalized, under the provisions of 40 CFR section 51.918, the requirement to submit certain planning SIPs related to attainment (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) are not applicable to the area as long as it continues to attain the NAAQS and would cease to be applicable upon redesignation. Finally, EPA is proposing to approve the newly-established 2012 and 2020 MVEBs for the Columbus area. The adequacy comment period for the MVEBs began on February 18, 2009, with EPA's posting of the availability of the submittal on EPA's Adequacy Web site (at *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm*). The adequacy comment period for these MVEBs ended on March 20, 2009. EPA did not receive any requests for this submittal, or adverse comments on this submittal during the adequacy comment period. In a letter dated March 30, 2009, EPA informed Ohio EPA that we had found the 2012 and 2020 MVEBs to be adequate for use in transportation conformity analyses. Please see section VII. B. of this rulemaking, ''Adequacy of Ohio's MVEBs,'' for further explanation on this process. Therefore, we find adequate, and are proposing to approve, the State's 2012 and 2020 MVEBs for transportation conformity purposes.

III. What Is the Background for These Actions?

A. What Is the General Background Information?

Ground-level ozone is not emitted directly by sources. Rather, emissions of NO_X and volatile organic compounds (VOCs) react in the presence of sunlight to form ground-level ozone. NO_X and VOCs are referred to as precursors of ozone.

The CAA establishes a process for air quality management through the NAAQS. Before promulgation of the 8-hour standard, the ozone NAAQS was based on a 1-hour standard. On November 6, 1991 (56 FR 56693 and 56813), the Columbus area was designated as a moderate nonattainment area under the 1-hour ozone NAAQS. The area was subsequently redesignated to attainment of the 1-hour standard on February 1, 1996 (61 FR 3591). At the time EPA revoked the 1-hour ozone NAAQS, on June 15, 2005, the Columbus area was designated as attainment under the 1-hour ozone NAAQS.

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone standard of 0.08 parts per million parts (ppm). On April 30, 2004 (69 FR 23857), EPA published a final rule designating and classifying areas under the 8-hour ozone NAAQS. These designations and classifications became effective June 15, 2004. EPA designated as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of air quality data, 2001–2003.

The CAA contains two sets of provisions, subpart 1 and subpart 2, that address planning and control requirements for nonattainment areas. (Both are found in Title I, part D, 42 U.S.C. 7501–7509a and 7511–7511f, respectively.) Subpart 1 contains general requirements for nonattainment areas for any pollutant, including ozone, governed by a NAAQS. Subpart 2 provides more specific requirements for ozone nonattainment areas.

Under EPA's implementation rule for the 1997 8-hour ozone standard, (69 FR 23951 (April 30, 2004)), an area was classified under subpart 2 based on its 8-hour ozone design value (*i.e.,* the three-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at the time of designation at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2) (69 FR 23954). All other areas were covered under subpart 1, based upon their 8-hour design values (69 FR 23958). The Columbus area was designated as a subpart 1, 8-hour ozone nonattainment area by EPA on April 30, 2004 (69 FR 23857, 23927) based on air quality monitoring data from 2001–2003 (69 FR 23860).

40 CFR 50.10 and 40 CFR part 50, Appendix I provide that the 8-hour ozone standard is attained when the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm, when rounded. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness. See 40 CFR part 50, Appendix I, 2.3(d).

On March 17, 2009, Ohio EPA requested that EPA redesignate the Columbus area to attainment for the 8-hour ozone standard. The redesignation request included three years of complete, quality-assured data for the period of 2006 through 2008, indicating the 8-hour NAAQS for ozone, as promulgated in 1997, had been attained for the Columbus area. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data are available for the Administrator to determine that the area has attained the standard, and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075. EPA has not yet promulgated area designations for this standard. While both the 1997 and 2008 8-hour ozone standards are currently in place, the actions addressed in this proposed rulemaking relate only to the 1997 8-hour ozone standard.

B. What Are the Impacts of the December 22, 2006, and June 8, 2007, United States Court of Appeals Decisions Regarding EPA's Phase 1 Implementation Rule?

1. Summary of Court Decision

On December 22, 2006, in *South Coast Air Quality Management Dist.* v. *EPA,* the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard (69 FR 23951, April 30, 2004). 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the DC Circuit Court clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. *Id.,* Docket No. 04 1201. Therefore, several provisions of the Phase 1 Rule remain effective: Provisions related to classifications for areas currently classified under subpart 2 of Title I, part D, of the Act as 8-hour nonattainment areas; the 8-hour attainment dates; and the timing for emissions reductions needed for attainment of the 8-hour ozone NAAQS. The June 8, 2007, decision also left intact the Court's rejection of EPA's reasons for implementing the 8-hour standard in certain nonattainment areas under subpart 1 in lieu of subpart 2. By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 Rule that had not been successfully challenged. The June 8, 2007, decision reaffirmed the December 22, 2006, decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area New Source Review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas; (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS, or for failure to attain that NAAQS; and (4) certain transportation conformity requirements for certain types of Federal actions. The June 8, 2007, decision clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

This section sets forth EPA's views on the potential effect of the Court's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action so as to preclude redesignation or prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, and June 8, 2007, decisions impose no impediment to moving forward with redesignation of this area to attainment, because even in light of the Court's decisions, redesignation is appropriate under the relevant redesignation provisions of the CAA and longstanding policies regarding redesignation requests.

2. Requirements Under the 8-Hour Standard

With respect to the 8-hour standard, the Court's ruling rejected EPA's reasons for classifying areas under subpart 1 for the 8-hour standard, and remanded that matter to the Agency. In its January 16, 2009 proposed rulemaking in response to the South Coast decision, EPA has proposed to classify Columbus under subpart 2 as a moderate area. 74 FR 2936, 2944. If EPA finalizes this rulemaking, the requirements under subpart 2 will become applicable when they are due, a deadline that EPA has proposed to be one year after the effective date of a final rulemaking classifying areas as moderate or marginal. 74 FR 2940–2941. Although a future final decision by EPA to classify this area under subpart 2 would trigger additional future requirements for the area, EPA believes that this does not mean that redesignation cannot now go forward. This belief is based upon: (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the request is submitted; and (2) consideration of the inequity of applying retroactively any requirements that might in the future be applied.

First, at the time the redesignation request was submitted, the Columbus area was not classified under subpart 2, nor were there any subpart 2 requirements yet due for this area. Under EPA's longstanding interpretation of section 107(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request. See September 4, 1992, Calcagni memorandum (''Procedures for Processing Requests To Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division). See also Michael Shapiro Memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (Redesignation of Detroit-Ann Arbor). See *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004), which upheld this interpretation. See, *e.g.* also 68 FR 25418, 25424, 25427 (May 12, 2003) (redesignation of St. Louis).

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The DC Circuit has recognized the inequity in such retroactive rulemaking. In *Sierra Club* v. *Whitman,* 285 F. 3d 63 (DC Cir. 2002), the DC Circuit upheld a District Court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The Court stated: ''Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly here it would be unfair to penalize the area by applying to it for purposes of redesignation additional SIP requirements under subpart 2 that were not in effect or yet due at the time it submitted its redesignation request.

3. Requirements Under the 1-Hour Standard

With respect to the 1-hour standard requirements, the Columbus area was an attainment area subject to a CAA section 175A maintenance plan under the 1-hour standard. The DC Circuit's decisions do not impact redesignation requests for these types of areas, except to the extent that the Court in its June 8, 2007, decision clarified that for those areas with 1-hour motor vehicle emissions budgets in their maintenance plans, anti-backsliding requires that those 1-hour budgets must be used for 8-hour conformity determinations until replaced by 8-hour budgets. To meet this requirement, conformity determinations in such areas must comply with the applicable requirements of EPA's conformity regulations at 40 CFR part 93.

With respect to the three other anti-backsliding provisions for the 1-hour standard that the Court found were not properly retained, the Columbus area is an attainment area subject to a maintenance plan for the 1-hour standard, and the NSR, contingency

measure (pursuant to section 172(c)(9) or 182(c)(9)), and fee provision requirements no longer apply to an area that has been redesignated to attainment of the 1-hour standard.

Thus, the decision in South Coast Air Quality Management Dist. would not preclude EPA from finalizing the redesignation of this area.

IV. What Are the Criteria for Redesignation?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and (5) the state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990 on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from William G. Laxton, Director, Technical Support Division, June 18, 1990;

''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

''Procedures for Processing Requests To Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

''Technical Support Documents (TSDs) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, November 30, 1993.

''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

V. What Is the Effect of These Actions?

Approval of the redesignation request would change the official designation of the area for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Ohio SIP a plan for maintaining the 8-hour ozone NAAQS through 2020. The maintenance plan includes contingency measures to remedy future violations of the 8-hour NAAQS. It also establishes MVEBs of 54.86 and 36.60 tons per day (tpd) VOC and 91.64 and 46.61 tpd NO_X for the years 2012 and 2020, respectively.

VI. What Is EPA's Analysis of the Request?

A. Attainment Determination and Redesignation

EPA is proposing to make a determination that the Columbus area has attained the 8-hour ozone standard and that the area has met all other applicable section 107(d)(3)(E) redesignation criteria. The basis for EPA's determination is as follows:

1. The Area Has Attained the 8-Hour Ozone NAAQS (Section 107(d)(3)(E)(i))

EPA is proposing to make a determination that the Columbus area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and part 50, Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Ohio EPA submitted ozone monitoring data for the 2006 to 2008 ozone seasons. Ohio EPA quality-assured the ambient monitoring data in accordance with 40 CFR 58.10, and recorded it in the AIRS database, thus making the data publicly available. The data meet the completeness criteria in 40 CFR 50, Appendix I, which requires a minimum completeness of 75 percent annually and 90 percent over each three year period. Monitoring data is presented in Table 1 below.

TABLE 1—ANNUAL 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATION AND THREE YEAR AVERAGES OF 4TH HIGH DAILY MAXIMUM 8-HOUR OZONE CONCENTRATIONS

County	Monitor	2006 4th high (ppm)	2007 4th high (ppm)	2008 4th high (ppm)	2006–2008 average (ppm)
Delaware	Delaware, 39–041–0002	0.075	0.080	0.075	0.076
Franklin	Koebel School, 39–049–0028	0.076	0.078	0.069	0.074
	New Albany, 39–049–0029	0.082	0.087	0.083	0.084
	Franklin Park, 39–049–0037	0.079	0.079	0.071	0.076
	Maple Canyon, 39–049–0081	0.077	0.079	0.066	0.074
Knox	Centerburg, 39–083–0002	0.075	0.080	0.074	0.076
Licking	Heath, 39–089–0005	0.072	0.078	0.074	0.074
Madison	London, 39–097–0007	0.076	0.083	0.071	0.076

In addition, as discussed below with respect to the maintenance plan, Ohio EPA has committed to continue to operate an EPA-approved monitoring network as necessary to demonstrate ongoing compliance with the NAAQS. Ohio EPA commits to continue monitoring ozone at the sites indicated in Table 1. Ohio EPA also commits to consult with EPA prior to making changes to the existing monitoring network, should changes become necessary in the future. Ohio EPA remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System in accordance with Federal guidelines. In summary, EPA believes that the data submitted by Ohio provide an adequate demonstration that the Columbus area has attained the 8-hour ozone NAAQS, and currently available data show that the area continues to attain the standard. Should the area violate the standard before the redesignation is finalized, EPA will not go forward with the redesignation.

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D; and the Area Has a Fully Approved SIP Under Section 110(k) (Sections 107(d)(3)(E)(v) and 107(d)(3)(E)(ii))

We have determined that Ohio has met all currently applicable SIP requirements for purposes of redesignation for the Columbus area under section 110 of the CAA (general SIP requirements). We are also proposing to determine that the Ohio SIP meets all SIP requirements currently applicable for purposes of redesignation under part D of Title I of the CAA (requirements specific to subpart 1 nonattainment areas), in accordance with section 107(d)(3)(E)(v). In addition, with the exception of the base year emissions inventory, we have determined that the Ohio SIP is fully approved with respect to all applicable requirements for purposes of redesignation, in accordance with section 107(d)(3)(E)(ii). As discussed below, in this action EPA is proposing to approve Ohio's 2002 base year emissions inventory.

In proposing these determinations, we have ascertained what SIP requirements are applicable to the area for purposes of redesignation, and have determined that the portions of the SIP meeting these requirements are fully approved under section 110(k) of the CAA. As discussed more fully below, SIPs must be fully approved only with respect to currently applicable requirements of the CAA.

The September 4, 1992, Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E) of the CAA. Under this interpretation, a state and the area it wishes to redesignate must meet the relevant CAA requirements that are due prior to the state's submittal of a complete redesignation request for the area. See also the September 17, 1993, Michael Shapiro memorandum and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, Michigan to attainment of the 1-hour ozone NAAQS). Applicable requirements of the CAA that come due subsequent to the state's submittal of a complete request remain applicable until a redesignation to attainment is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of the St. Louis/East St. Louis area to attainment of the 1-hour ozone NAAQS).

Since EPA is proposing here to determine that the area has attained the 1997 8-hour ozone standard, under 40 CFR 51.918, if that determination is finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the RACM requirement of section 172(c)(1) of the CAA, the RFP and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the CAA, and the requirement for contingency measures of section 172(c)(9) of the CAA) would not be applicable to the area as long as it continues to attain the NAAQS and would cease to apply upon redesignation. In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble EPA stated that:

> [t]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans * * * provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. ''General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990,'' (General Preamble) 57 FR 13498, 13564 (April 16, 1992).

See also Calcagni memorandum at 6 (''The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard.'').

a. The Columbus Area Has Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA

i. Section 110 General SIP Requirements

Section 110(a) of Title I of the CAA contains the general requirements for a SIP. Section 110(a)(2) provides that the implementation plan submitted by a

state must have been adopted by the state after reasonable public notice and hearing, and that, among other things, it includes enforceable emission limitations and other control measures, means or techniques necessary to meet the requirements of the CAA; provides for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; provides for implementation of a source permit program to regulate the modification and construction of any stationary source within the areas covered by the plan; includes provisions for the implementation of part C, Prevention of Significant Deterioration (PSD) and part D, NSR permit programs; includes criteria for stationary source emission control measures, monitoring, and reporting; includes provisions for air quality modeling; and provides for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) of the CAA requires that SIPs contain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants (NO_X SIP Call [1] and Clean Air Interstate Rule (CAIR) (70 FR 25162, May 12, 2005)). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we believe that these requirements should not be construed to be applicable requirements for purposes of redesignation.

Further, we believe that the other section 110 elements described above that are not connected with nonattainment plan submissions and not linked with an area's attainment status are also not applicable requirements for purposes of redesignation. A state remains subject to these requirements after an area is redesignated to attainment. We conclude that only the section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures which we may consider in evaluating a redesignation request. This approach is consistent with EPA's existing policy on applicability of conformity and oxygenated fuels requirements for redesignation purposes, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati, Ohio ozone redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh, Pennsylvania ozone redesignation (66 FR 50399, October 19, 2001).

We have reviewed Ohio's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of the Ohio SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.1870). Further, in submittals dated December 5, 2007, and September 19, 2008, Ohio confirmed that the State continues to meet the section 110 requirements for the 8-hour ozone standard. EPA has not yet taken rulemaking action on these submittals; however, such approval is not necessary for redesignation.

ii. Part D Requirements

EPA has determined that, if EPA finalizes the approval of the base year emissions inventory discussed in section VII.C. of this rulemaking, the Ohio SIP will meet the applicable SIP requirements for the Columbus area applicable for purposes of redesignation under part D of the CAA. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, which includes section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

Since the Columbus area was not classified under subpart 2 of part D at the time its redesignation request was submitted, the subpart 2 requirements do not apply for purposes of redesignation. The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and in section 176.

Subpart 1 Section 172 Requirements

For purposes of evaluating this redesignation request, the applicable section 172 SIP requirements for the Columbus area are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498, April 16, 1992).

Section 172(c)(1) requires the plans for all nonattainment areas to provide for the implementation of all RACM as expeditiously as practicable and shall provide for attainment of the national primary ambient air quality standards. The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area as components of the area's attainment demonstration. On November 25, 2008 and February 2, 2009, Ohio EPA submitted an attainment demonstration and identified the control measures necessary to attain the NAAQS in the Columbus area. However, because attainment has been reached, no additional measures are needed to provide for attainment, and section 172(c)(1) requirements are no longer considered to be applicable as long as the area continues to attain the standard.

The RFP requirement under section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant because the Columbus area has demonstrated monitored attainment of the ozone NAAQS. (General Preamble, 57 FR 13564). In addition, because the Columbus area has attained the ozone NAAQS and is no longer subject to an RFP requirement, the requirement to submit the section 172(c)(9) contingency measures are not applicable

Section 172(c)(3) requires submission and approval of a comprehensive, accurate and current inventory of actual emissions. As part of Ohio's redesignation request for the Columbus area, the state submitted a 2002 base year emissions inventory. As discussed below, EPA is proposing to approve the 2002 base year inventory that Ohio submitted with the redesignation

[1] On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X in order to reduce the transport of ozone and ozone precursors. In compliance with EPA's NO_X SIP call, Ohio EPA has developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Ohio's rules as fulfilling Phase I of the NO_X SIP Call on August 5, 2003 (68 FR 46089) and June 27, 2005 (70 FR 36845). EPA approved Ohio's rules as meeting Phase II of the NO_X SIP call on February 4, 2008 (73 FR 6427).

request as meeting the section 182(a)(1) emissions inventory requirement.

Section 172(c)(4) requires the identification and quantification of allowable emissions for major new and modified stationary sources to be allowed in an area, and section 172(c)(5) requires source permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. EPA has determined that, since PSD requirements will apply after redesignation, areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the NAAQS without part D NSR. A more detailed rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled, ''Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.'' Ohio has demonstrated that the Columbus area will be able to maintain the standard without part D NSR in effect; therefore, EPA concludes that the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the Columbus area upon redesignation to attainment. See rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); and Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 172(c)(6) requires the SIP to contain control measures necessary to provide for attainment of the standard. Because attainment has been reached, no additional measures are needed to provide for attainment.

Section 172(c)(7) requires the SIP to meet the applicable provisions of section 110(a)(2). As noted above, we believe the Ohio SIP meets the requirements of section 110(a)(2) for purposes of redesignation.

Subpart 1 Section 176 Conformity Requirements

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally-supported or funded activities, including highway projects, conform to the air quality planning goals in the applicable SIPs. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 of the U.S. Code and the Federal Transit Act (transportation conformity) as well as to all other Federally-supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability, which EPA promulgated pursuant to CAA requirements.

EPA believes that it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) for two reasons. First, the requirement to submit SIP revisions to comply with the conformity provisions of the CAA continues to apply to areas after redesignation to attainment since such areas would be subject to a section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of Federally-approved state rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and, because they must implement conformity under Federal rules if state rules are not yet approved, EPA believes it is reasonable to view these requirements as not applying for purposes of evaluating a redesignation request. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748, 62749–62750 (Dec. 7, 1995) (Tampa, Florida).

EPA approved Ohio's general and transportation conformity SIPs on March 11, 1996 (61 FR 9646), and May 30, 2000 (65 FR 34395), respectively. Ohio has submitted onroad motor vehicle budgets for the Columbus area of 54.86 and 36.60 tpd VOC and 91.64 and 46.61 tpd NO_X for the years 2012 and 2020, respectively. The area must use the MVEBs from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

b. The Columbus Area Has a Fully Approved Applicable SIP Under Section 110(k) of the CAA

If EPA issues a final approval of the base year emissions inventory, EPA will have fully approved the Ohio SIP for the Columbus area under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request (See page 3 of the September 4, 1992, John Calcagni memorandum; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–990 (6th Cir. 1998); *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001)) plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25413, 25426 (May 12, 2003). Since the passage of the CAA of 1970, Ohio has adopted and submitted, and EPA has fully approved, provisions addressing the various required SIP elements applicable to the Columbus area under the 1-hour ozone standard. In this action, EPA is proposing to approve Ohio's 2002 base year emissions inventory for the Columbus area as meeting the requirement of section 172(c)(3) of the CAA. No Columbus area SIP provisions are currently disapproved, conditionally approved, or partially approved.

3. The Improvement in Air Quality Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions (Section 107(d)(3)(E)(iii))

EPA finds that Ohio has demonstrated that the observed air quality improvement in the Columbus area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures.

In making this demonstration, the State has calculated the change in emissions between 2002 and 2006. Ohio used the 2002 nonattainment area base year emissions inventory required under section 172(c)(3) of the CAA as the nonattainment inventory for redesignation purposes. The State developed an attainment inventory for 2006, one of the years the Columbus area monitored attainment. The reduction in emissions and the corresponding improvement in air quality over this time period can be attributed to a number of regulatory control measures that Columbus and upwind areas have implemented in recent years.

a. Permanent and Enforceable Controls Implemented

The following is a discussion of permanent and enforceable measures that have been implemented in the areas:

i. Stationary Source NO_X Rules. Ohio EPA developed rules governing the control of NO_X emissions from Electric Generating Units (EGUs), major non-EGU industrial boilers, and major cement kilns. EPA approved Ohio's rules as fulfilling Phase I of the NO_X SIP Call on August 5, 2003 (68 FR 46089), and June 27, 2005 (70 FR 36845), and as fulfilling Phase II of the SIP call on

February 4, 2008 (73 FR 6427). Beginning in 2004, this rule accounts for approximately a 31 percent reduction in statewide NO_X emissions.

ii. Federal Emission Control Measures. Reductions in VOC and NO_X emissions have occurred statewide and in upwind areas as a result of Federal emission control measures, with additional emission reductions expected to occur in the future. Federal emission control measures include: The National Low Emission Vehicle (NLEV) program, Tier 2 emission standards for vehicles, gasoline sulfur limits, low sulfur diesel fuel standards, and heavy-duty diesel engine standards. In addition, on June 29, 2004 (69 FR 38958), EPA issued the Clean Air Non-road Diesel Rule, which phases in Tier 4 emissions standards over the 2008–2015 time period.

iii. Control Measures in Upwind Areas. On October 27, 1998 (63 FR 57356), EPA issued a NO_X SIP call requiring the District of Columbia and 22 states to reduce emissions of NO_X. The reduction in NO_X emissions has resulted in lower concentrations of transported ozone entering the Columbus area. Emission reductions resulting from regulations developed in response to the NO_X SIP call are permanent and enforceable.

b. Emission Reductions

Ohio is using the 2002 base year inventory developed pursuant to section 172(c)(3) of the CAA as the nonattainment inventory. In developing the 2002 base year inventory, Ohio EPA provided point and area source inventories to the Lake Michigan Air Directors Consortium (LADCO). The main purpose of LADCO is to provide technical assessments for and assistance to its member states on problems of air quality. LADCO's primary geographic focus is the area encompassed by its member states (Illinois, Indiana, Michigan, Ohio and Wisconsin) and any areas which affect air quality in its member states. LADCO processed these inventories through the Emission Modeling System (EMS) to generate summer weekday emissions for VOC and NO_X. The processed modeling inventories were used for the base year inventory. The point source data provided to LADCO is a combination of EPA's EGU inventory and source specific data reported to Ohio EPA for non-EGU sources. Area source emissions were estimated by Ohio EPA using published Emission Inventory Improvement Program methodologies or methodologies shared by other states. Ohio EPA documented the methodology used for each area source category. Nonroad mobile emissions were generated for LADCO using EPA's National Mobile Inventory Model (NMIM), with the following exceptions: Recreational motorboat populations and spatial surrogates were updated; emissions estimates were developed for commercial marine vessels, aircraft, and railroads (MAR), three nonroad categories not included in NMIM; and onroad mobile emissions were calculated using the MOBILE6.2 emissions model.

Ohio is using 2006 for the attainment year inventory. Ohio EPA developed a 2005 base year inventory, in conjunction with LADCO, using the methodology described above for base year 2002. With the exception of the onroad mobile sector, Ohio EPA used growth factors provided by LADCO to project this inventory to 2006. Onroad mobile emissions were calculated for 2006 using the MOBILE6.2 emissions model.

Using the inventories described above, Ohio's submittal documents changes in VOC and NO_X emissions from 2002 to 2006 for the Columbus area. Emissions data are shown in Tables 3 through 5 below.

TABLE 3—COLUMBUS AREA VOC AND NO_X EMISSIONS FOR NONATTAINMENT YEAR 2002 (TPD)

	Point		Area		Nonroad		Onroad		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Delaware	0.30	0.02	5.40	0.63	4.28	5.54	9.15	16.07	19.13	22.26
Fairfield	0.20	5.37	4.97	0.39	1.88	2.42	7.13	11.21	14.18	19.39
Franklin	3.03	2.43	43.07	4.47	17.51	25.01	64.32	106.77	127.93	138.68
Knox	0.00	0.00	3.96	0.35	1.08	1.93	2.35	3.26	7.39	5.54
Licking	0.49	1.72	6.23	0.77	2.51	4.54	10.20	17.44	19.43	24.47
Madison	0.00	0.00	4.65	0.23	1.09	2.46	4.69	9.20	10.43	11.89
Total	4.02	9.54	68.28	6.84	28.35	41.90	97.84	163.95	198.49	222.23

TABLE 4—COLUMBUS VOC AND NO_X EMISSIONS FOR ATTAINMENT YEAR 2006 (TPD)

	Point		Area		Nonroad		Onroad		Total	
	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X
Delaware	0.44	0.05	5.94	1.24	5.35	8.01	6.70	12.11	18.43	21.41
Fairfield	0.26	4.38	6.13	0.90	2.17	4.07	4.70	7.73	13.26	17.08
Franklin	3.00	2.13	46.53	10.69	21.62	27.03	46.55	85.07	117.70	124.92
Knox	0.00	0.04	3.29	0.60	1.50	1.99	2.09	2.98	6.88	5.61
Licking	0.52	2.69	8.37	1.59	3.46	3.77	6.97	12.91	19.32	20.96
Madison	0.13	0.01	2.98	0.41	1.42	2.83	3.26	7.00	7.79	10.25
Total	4.35	9.30	73.24	15.43	35.52	47.70	70.27	127.80	183.38	200.23

TABLE 5—COMPARISON OF COLUMBUS 2002 AND 2006 VOC AND NO_X EMISSIONS (TPD)

	VOC			NO_X		
	2002	2006	Net change (2002–2006)	2002	2006	Net change (2002–2006)
Point	4.02	4.35	0.33	9.54	9.30	−0.24
Area	68.28	73.24	4.96	6.84	15.43	8.59
Nonroad	28.38	35.52	7.17	41.90	47.70	5.80
Onroad	97.84	70.27	−27.57	163.95	127.80	−36.15
Total	198.49	183.38	−15.11	222.23	200.23	−22.00

Table 5 shows that the Columbus area reduced VOC emissions by 15.11 tpd and NO_X emissions by 22.00 tpd between 2002 and 2006. Based on the information summarized above, Ohio has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

4. The Area Has a Fully Approved Maintenance Plan Pursuant to Section 175a of the CAA (Section 107(d)(3)(E)(iv))

In conjunction with its request to redesignate the Columbus nonattainment area to attainment status, Ohio submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the area through 2020.

a. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the required elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for ten years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations.

The September 4, 1992, John Calcagni memorandum provides additional guidance on the content of a maintenance plan. The memorandum clarifies that an ozone maintenance plan should address the following items: The attainment VOC and NO_X emissions inventories, a maintenance demonstration showing maintenance for the ten years of the maintenance period, a commitment to maintain the existing monitoring network, factors and procedures to be used for verification of continued attainment of the NAAQS, and a contingency plan to prevent or correct future violations of the NAAQS.

b. Attainment Inventory

The Ohio EPA developed an emissions inventory for 2006, one of the years Ohio used to demonstrate monitored attainment of the 8-hour NAAQS, as described above. The attainment level of emissions is summarized in Table 4, above.

c. Demonstration of Maintenance

Along with the redesignation request, Ohio submitted a revision to the 8-hour ozone SIP to include a maintenance plan for the Columbus area, in compliance with section 175A of the CAA. This demonstration shows maintenance of the 8-hour ozone standard through 2020 by assuring that current and future emissions of VOC and NO_X for the Columbus area remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA,* 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25413, 25430–25432 (May 12, 2003).

Ohio is using emissions inventories for the years 2012 and 2020 to demonstrate maintenance. Onroad emissions for 2012 and 2020 emissions were calculated using the MOBILE6.2 emissions model. Emissions estimates for the remaining source categories were based on future year inventories developed by LADCO for the years 2012 and 2018. With the exception of MAR, nonroad emissions for these years were estimated using NMIM. MAR emissions were derived by applying growth and control factors to the 2005 inventory. EGU emissions were based on IPM3.0 modeling and assume no credit for implementation of CAIR in the area. Area source and non-EGU point source emissions were derived by applying growth and control factors to the 2005 inventory. To derive 2020 emissions estimates, Ohio EPA applied LADCO growth factors to the 2018 LADCO inventory.

Ohio is in the process of revising its state rules for its Best Available Technology (BAT) minor source permitting program. As discussed above, a state can demonstrate maintenance of the standard by showing that future emissions of VOC and NO_X for the area remain at or below attainment year emission levels. Ohio EPA's emissions projections for this maintenance plan assume no emissions benefits from implementation of the BAT program. The LADCO growth factors used to project future emissions were developed using techniques consistent among the LADCO states and assume implementation of no minor source permitting programs for any state, including Ohio. The emission projections show that Ohio EPA does not expect emissions in the Columbus area to exceed the level of the 2006 attainment year inventory during the maintenance period. Ohio's maintenance plan demonstrates that the area can maintain the standard through 2020 applying standard growth factors and without the BAT program. EPA believes that Ohio has provided adequate demonstration of maintenance, and that any changes to the BAT program should not impact the Columbus area's ability to attain or maintain the 1997 8-hour ozone NAAQS. Therefore, the issues associated with the BAT program are not being considered for purposes of this redesignation. Nothing in this rule or redesignation is intended to affect the SIP approvability or non-approvability of any revised Ohio BAT rules, and EPA will evaluate the approvability of such rules when Ohio submits them. Emissions data are shown in Table 6 below.

TABLE 6—COLUMBUS AREA VOC AND NO_X EMISSIONS FOR 2006, 2012 AND 2020 (TPD)

	VOC					NO_X				
	2006	2012	2020	Net change 2006–2012	Net change 2006–2020	2006	2012	2020	Net change 2006–2012	Net change 2006–2020
Point	4.35	4.88	5.72	0.53	1.37	9.30	9.18	9.75	−0.12	0.45
Area	73.24	59.22	52.66	−14.02	−20.58	15.43	15.61	15.70	0.18	0.27
Nonroad	35.52	26.56	26.44	−8.96	−9.08	47.70	35.13	18.74	−12.57	−28.96
Onroad	70.27	47.70	31.83	−22.57	−38.44	127.80	79.69	40.53	−48.11	−87.27
Total	183.38	138.36	116.65	−45.02	−66.73	200.23	139.61	84.72	−60.62	−115.51

The emission projections show that Ohio EPA does not expect emissions in the Columbus area to exceed the level of the 2006 attainment year inventory during the maintenance period, even without implementation of CAIR. In the Columbus area, Ohio EPA projects that VOC and NO_X emissions will decrease by 66.73 tpd and 115.51 tpd, respectively, between 2006 and 2020.

In addition, LADCO performed a regional modeling analysis to address the effect of the recent court decision vacating CAIR. This analysis is documented in LADCO's ''Regional Air Quality Analyses for Ozone, PM2.5, and Regional Haze: Final Technical Support Document (Supplement), September 12, 2008.'' LADCO produced a base year inventory for 2005 and future year inventories for 2009, 2012, and 2018. To estimate future EGU NO_X emissions without implementation of CAIR, LADCO projected 2007 EGU NO_X emissions for all states in the modeling domain based on Energy Information Administration growth rates by state (North American Electric Reliability Corporation (NERC) region) and fuel type for the years 2009, 2012 and 2018. The assumed 2007–2018 growth rates were 8.8% for Illinois, Iowa, Missouri and Wisconsin; 13.5% for Indiana, Kentucky, Michigan and Ohio; and 15.1% for Minnesota. Emissions were adjusted by applying legally enforceable controls, *e.g.,* consent decree or rule. EGU NO_X emissions projections for the states of Illinois, Indiana, Michigan, Ohio, and Wisconsin are shown below in Table 7. The emission projections used for the modeling analysis do not account for certain relevant factors such as allowance trading and potential changes in operation of existing control devices. The NO_X projections indicate that, due to the NO_X SIP call, certain State rules, consent decrees resulting from enforcement cases, and ongoing implementation of a number of mobile source rules, EGU NO_X is not expected to increase in Ohio or any of the States in the immediate region, and overall NO_X emissions in Ohio and the nearby region are expected to decrease substantially between 2005 and 2020.[2] Total NO_X emissions projections are shown in Table 8, below.

TABLE 7—EGU NO_X EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR 2007, 2009, 2012, AND 2018

	2007	2009	2012	2018
EGU	1,582	1,552	1,516	1,524

TABLE 8—TOTAL NO_X EMISSIONS FOR THE STATES OF ILLINOIS, INDIANA, MICHIGAN, OHIO AND WISCONSIN (TPD) FOR THE YEARS 2005, 2009, 2012, AND 2018

	2005	2009	2012	2018
Total NO_X	8,260	6,778	6,076	4,759

Given that 2007 is one of the years Ohio used to demonstrate monitored attainment of the 8-hour NAAQS, Table 7 shows that EGU NO_X emissions will remain below attainment levels through 2018. If the rate of emissions increase between 2012 and 2018 continues through 2020, EGU NO_X emissions would still remain below attainment levels in 2020. Furthermore, as shown in Table 8, total NO_X emissions clearly continue to decrease substantially throughout the maintenance period.

Ozone modeling performed by LADCO using this emissions data supports the conclusion that the Cleveland-Akron-Lorain area will maintain the standard throughout the maintenance period. Peak modeled ozone levels in the area for 2009, 2012 and 2018 are 0.082 ppm, 0.080 ppm, and 0.074 ppm, respectively. These projected ozone levels were modeled applying only legally enforceable controls, *e.g.,* consent decrees, rules, the NO_X SIP call, federal motor vehicle control programs (FMVCP), etc. Because these programs will remain in place, emission levels, and therefore ozone levels, would not be expected to increase significantly between 2018 and 2020. Given that projected emissions and modeled ozone levels continue to decrease substantially through 2018, it is reasonable to infer that a 2020 modeling run would also show levels well below the 1997 8-hour ozone standard.

As part of its maintenance plan, the State elected to include a ''safety margin'' for the area. A ''safety margin''

[2] There is more uncertainty about the use of SO_2 allowances and future projections for SO_2 emissions; thus, further review and discussion will be needed regarding the appropriateness of using these emission projections for future PM2.5 SIP approvals and redesignation requests.

is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan which continues to demonstrate attainment of the standard. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. The Columbus area attained the 8-hour ozone NAAQS during the 2006–2008 time period. Ohio used 2006 as the attainment level of emissions for the area. In the maintenance plan, Ohio EPA projected emission levels for 2020. For the Columbus area, the emissions from point, area, nonroad, and mobile sources in 2006 equaled 183.38 tpd of VOC. Ohio EPA projected VOC emissions for the year 2020 to be 116.65 tpd of VOC. The SIP submission demonstrates that the Columbus area will continue to maintain the standard with emissions at this level. The safety margin for VOC is calculated to be the difference between these amounts or, in this case, 66.73 tpd of VOC for 2020. By this same method, 115.51 tpd (*i.e.*, 200.23 tpd less 84.72 tpd) is the safety margin for NO_X for 2020. The safety margin, or a portion thereof, can be allocated to any of the source categories, as long as the total attainment level of emissions is maintained.

d. Monitoring Network

Ohio currently operates eight ozone monitors in the Columbus area. Ohio EPA has committed to continue to operate these ozone monitors. Further, Ohio EPA commits to consult with EPA prior to making changes to the existing monitoring network, should changes become necessary in the future. Ohio EPA remains obligated to continue to quality assure monitoring data in accordance with 40 CFR part 58 and enter all data into the Air Quality System in accordance with Federal guidelines.

e. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Columbus area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. Ohio's plan for verifying continued attainment of the 8-hour standard in the Columbus area consists of plans to continue ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. Ohio EPA will also continue to develop and submit periodic emission inventories as required by the Federal Consolidated Emissions Reporting Rule (67 FR 39602, June 10, 2002) to track future levels of emissions.

f. Contingency Plan

The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. See section 175A(d) of the CAA.

As required by section 175A of the CAA, Ohio has adopted a contingency plan for the Columbus area to address possible future ozone air quality problems. The contingency plan adopted by Ohio has two levels of response, depending on whether a violation of the 8-hour ozone standard is only threatened (warning level response) or has occurred (action level response).

A warning level response will be triggered when an annual fourth high monitored value of 0.088 ppm or higher is monitored within the maintenance area. A warning level response will consist of Ohio EPA conducting a study to determine whether the ozone value indicates a trend toward higher ozone values or whether emissions appear to be increasing. The study will evaluate whether the trend, if any, is likely to continue and, if so, the control measures necessary to reverse the trend. The study will consider ease and timing of implementation as well as economic and social impacts. Implementation of necessary controls in response to a warning level response trigger will take place within 12 months from the conclusion of the most recent ozone season.

An action level response will be triggered when a two-year average fourth high value of 0.085 ppm is monitored within the maintenance area. A violation of the standard (a three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration of 0.085 ppm or greater) also triggers an action level response. When an action level response is triggered, Ohio EPA will determine what additional control measures are needed to assure future attainment of the ozone standard. Control measures selected will be implemented within 18 months from the close of the ozone season that prompted the action level. Ohio EPA will also consider if significant new regulations not currently included as part of the maintenance provisions will be implemented in a timely manner and would thus constitute a response.

Ohio EPA included the following list of potential contingency measures in the maintenance plan:

i. Lower Reid vapor pressure gasoline program;

ii. Adopt VOC Reasonably Available Control Technology (RACT) on existing sources covered by EPA Control Technique Guidelines issued after the 1990 CAA;

iii. Apply VOC RACT to smaller existing sources;

iv. One or more transportation control measures sufficient to achieve at least half a percent reduction in actual area wide VOC emissions;

v. Alternative fuel and diesel retrofit programs for fleet vehicle operations;

vi. High volume, low pressure coating application requirements for autobody facilities;

vii. Adopt requirements for cold cleaner degreaser operations (low vapor pressure solvents);

viii. Require VOC or NO_X emission offsets for new and modified major sources;

ix. Require VOC or NO_X emission offsets for new and modified minor sources;

x. Increase the ratio of emission offsets required for new sources;

xi. Require VOC or NO_X controls on new minor sources (less than 100 tpy); and,

xii. Adopt NO_X RACT for existing combustion sources.

g. Provisions for Future Updates of the Ozone Maintenance Plan

As required by section 175A(b) of the CAA, Ohio commits to submit to the EPA an updated ozone maintenance plan eight years after redesignation of the Columbus area to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175(A) of the CAA, Ohio has committed to retain the VOC and NO_X control measures contained in the SIP prior to redesignation.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a

maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Ohio for the Columbus area meets the requirements of section 175A of the CAA.

B. Adequacy of Ohio's MVEBs

1. How Are MVEBs Developed and What Are the MVEBs for the Columbus Area?

Under the CAA, states are required to submit, at various times, control strategy SIP revisions and ozone maintenance plans for ozone nonattainment areas and for areas seeking redesignations to attainment of the ozone standard. These emission control strategy SIP revisions (*e.g.*, reasonable further progress SIP and attainment demonstration SIP revisions) and ozone maintenance plans create MVEBs based on onroad mobile source emissions for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portions of the total allowable emissions that are allocated to highway and transit vehicle use that, together with emissions from other sources in the area, will provide for attainment or maintenance.

Under 40 CFR part 93, a MVEB for an area seeking a redesignation to attainment is established for the last year of the maintenance plan. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and how to revise the MVEB if needed.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.*, be consistent with) the part of the SIP that addresses emissions from cars and trucks. Conformity to the SIP means that transportation activities will not cause new air quality violations, worsen existing air quality violations, or delay timely attainment of the NAAQS. If a transportation plan does not conform, most new transportation projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing SIP revisions containing MVEBs, including attainment strategies, rate-of-progress plans, and maintenance plans, EPA must affirmatively find that the MVEBs are ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEBs to be adequate for transportation conformity purposes, the MVEBs are used by state and Federal agencies in determining whether proposed transportation projects conform to the SIP as required by section 176(c) of the CAA. EPA's substantive criteria for determining the adequacy of MVEBs are set out in 40 CFR 93.118(e)(4).

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and (3) EPA's finding of adequacy. The process of determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999, guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance was codified in the Transportation Conformity Rule Amendments for the ''New 8-Hour Ozone and PM 2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change,'' published on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

The Columbus area's maintenance plan contains new VOC and NO_X MVEBs for the years 2012 and 2020. The availability of the SIP submission with these 2012 and 2020 MVEBs was announced for public comment on EPA's Adequacy Web site on February 18, 2009 at: *http://www.epa.gov/otaq/stateresources/transconf/currsips.htm*. The EPA public comment period on adequacy of the 2012 and 2020 MVEBs for the Columbus area closed on March 20, 2009. No requests for this submittal or adverse comments on the submittal were received during the adequacy comment period. In a letter dated March 30, 2009, EPA informed Ohio EPA that we had found the 2012 and 2020 MVEBs to be adequate for use in transportation conformity analyses.

EPA, through this rulemaking, is proposing to approve the MVEBs for use to determine transportation conformity in the Columbus area because EPA has determined that the area can maintain attainment of the 8-hour ozone NAAQS for the relevant maintenance period with mobile source emissions at the levels of the MVEBs. Ohio EPA has determined the 2012 MVEBs for the Columbus area to be 54.86 tpd for VOC and 91.64 tpd for NO_X. Ohio EPA has determined the 2020 MVEBs for the area to be 36.60 tpd for VOC and 46.61 tpd for NO_X. These MVEBs are consistent with the onroad mobile source VOC and NO_X emissions projected by Ohio EPA for 2012 and 2020, as summarized in Table 6 above. Ohio has demonstrated that the Columbus area can maintain the 8-hour ozone NAAQS with mobile source emissions of 54.86 tpd and 36.60 tpd of VOC and 91.64 tpd and 46.615 tpd of NO_X in 2012 and 2020, respectively, since emissions will remain under attainment year emission levels.

2. What Is a Safety Margin?

A ''safety margin'' is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. As noted in Table 6, the Columbus area emissions are projected to have safety margins of 45.02 tpd for VOC and 60.62 tpd for NO_X in 2012 (the difference between the attainment year, 2006, emissions and the projected 2012 emissions for all sources in the Columbus area). For 2020, the Columbus area emissions are projected to have safety margins of 66.73 tpd for VOC and 115.51 tpd for NO_X. Even if emissions reached the full level of the safety margin, the counties would still demonstrate maintenance since emission levels would equal those in the attainment year.

The MVEBs requested by Ohio EPA contain safety margins for mobile sources smaller than the allowable safety margins reflected in the total emissions for the Columbus area. The State is not requesting allocation of the entire available safety margins reflected in the demonstration of maintenance. Therefore, even though the State is requesting MVEBs that exceed the projected onroad mobile source emissions for 2012 and 2020 contained in the demonstration of maintenance, the increase in onroad mobile source emissions that can be considered for transportation conformity purposes is well within the safety margins of the ozone maintenance demonstration. Further, once allocated to mobile sources, these safety margins will not be available for use by other sources.

C. 2002 Base Year Emissions Inventory

As discussed above, section 172(c)(3) of the CAA requires areas to submit a base year emissions inventory. As part of Ohio's redesignation request for the

Columbus area, the State submitted a 2002 base year emissions inventory. This inventory is discussed above and summarized in Table 3. EPA is proposing to approve this 2002 base year inventory as meeting the section 172(c)(3) emissions inventory requirement.

VII. What Action Is EPA Taking?

EPA is proposing to make a determination that the Columbus area has attained the 8-hour ozone NAAQS. EPA is also proposing to approve the maintenance plan SIP revision for the Columbus area. EPA's proposed approval of the maintenance plan is based on Ohio's demonstration that the plan meets the requirements of section 175A of the CAA, as described more fully above. After evaluating Ohio's redesignation request, EPA believes that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. Therefore, EPA is proposing to approve the redesignation of the Columbus area from nonattainment to attainment for the 8-hour ozone NAAQS. The final approval of this redesignation request would change the official designation for the Columbus area from nonattainment to attainment for the 8-hour ozone standard. EPA is proposing to approve the 2002 base year emissions inventory for the Columbus area as meeting the requirements of section 172(c)(3) of the CAA. Finally, EPA also finds adequate and is proposing to approve the State's 2012 and 2020 MVEBs for the section 172(c)(3) area.

VIII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Air pollution control, Environmental protection, National parks, Wilderness areas.

Dated: June 4, 2009.

Walter W. Kovalick, Jr.,

Acting Regional Administrator, Region 5.

[FR Doc. E9–13855 Filed 6–11–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–325; DA 09–1127]

FM Digital Power Increase and Associated Technical Studies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission seeks comment on four issues, discussed below in the Synopsis, that are related to a request by certain private parties, identified below, that the technical specifications for FM digital audio broadcasting (''DAB'') set forth in the Commission's rules be amended to increase the maximum permissible operating power from the current level of 1 percent of a station's authorized analog power (−20 dB) up to a maximum of 10 percent of a station's authorized analog power (−10 dB). This document establishes a period for public comment on these issues and on two related technical studies.

DATES: Comments for this proceeding are due on or before July 6, 2009. Reply comments are due on or before July 17, 2009.

ADDRESSES: You may submit comments, identified by MM Docket No. 99–325, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* 445 12th Street, SW., Washington, DC 20554, with a copy to the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, 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 phone:* 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Peter H. Doyle, Chief, Audio Division, Media Bureau, at (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released by

the Media Bureau on May 22, 2009. The full text of this document is available for public inspection and copying during regular business hours in the Commission's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563 or via e-mail *FCC@BCPIWEB.com.* The full text may also be downloaded at: *http://www.fcc.gov.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

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 we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, 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. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- 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 must be addressed to 445 12th Street, SW., Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (Voice), 202–418–0432 (TTY).

Summary of Public Notice

On October 23, 2008, the Media Bureau released the ''October 23, 2008, *Public Notice''* soliciting comment on both a request filed June 10, 2008, asking the Commission to modify the technical specifications for FM digital audio broadcasting (DAB), and on two related technical studies. *Comment Sought on Joint Parties Request for FM Digital Power Increase and Associated Technical Studies,* MM Docket No. 99–325, Public Notice, DA 08–2340 (MB rel. Oct. 23, 2008). The request was filed by a group consisting of 18 broadcasters that operate over 1200 commercial and noncommercial educational (''NCE'') FM radio stations throughout the United States and the 4 largest manufacturers of broadcast transmission equipment, collectively identifying themselves as the ''Joint Parties.'' The Joint Parties requested that the Commission increase the maximum permissible digital operating power of FM stations from the current level of 1 percent of a station's authorized analog power (−20 dB) to a maximum of 10 percent of a station's authorized analog power (−10 dB) (the ''Joint Parties' Request'').

The October 23, 2008, *Public Notice* also sought comment on two related technical studies. Filed concurrently with and in support of the Joint Parties' Request was a technical report prepared by iBiquity Digital Corporation (''iBiquity''). In addition, National Public Radio (''NPR'') submitted on July 18, 2008, its Corporation for Public Broadcasting (''CPB'')-supported research on digital radio coverage and interference. The October 23, 2008, *Public Notice* sought comment on the Joint Parties' Request and these related technical studies.

Developments since the release of the October 23, 2008, *Public Notice* prompt the solicitation of further public comment. Specifically, in response to the October 23, 2008, *Public Notice,* the Media Bureau has received comments and reply comments both supporting and opposing the Joint Parties' Request. The Joint Parties have urged the Commission to move expeditiously on its request to ameliorate the coverage shortfalls and reception difficulties that result from digital transmissions at currently authorized power levels. NPR has announced the commencement of additional CPB-supported testing of FM DAB. NPR, *NPR Labs Launches CPB–Funded Study on Power Increase for HD Radio* (press release), *http://www.npr.org/about/press/2009/040209.CPBLabs.html,* Apr. 2, 2009. *See also* NPR *ex parte* filings, MM Docket No. 99–325. NPR states that its additional testing will result in a recommendation of the amount of power increase needed to improve digital radio coverage while also protecting analog FM signals, including subcarrier transmissions, from interference. The study also proposes to consider the minimum spacing distances needed to protect analog signals from higher powered digital operations. NPR states that the findings of its study will be presented in September 2009. Letter from Gregory A. Lewis, Counsel for NPR, to Marlene H. Dortch, Secretary, FCC, Attach. (Mar. 30, 2009). In response to the record before the Commission, as well as NPR's plans for additional testing of FM DAB, the Media Bureau solicits further comment on the previously submitted iBiquity and NPR technical studies and on the following issues: (1) Whether the Bureau should defer consideration of the Joint Parties' requested power increase until the completion of and comment on the further NPR studies; (2) whether the record in this proceeding, the real world experience gained from over 1,400 FM stations operating for several years in the hybrid mode and the record of experimental authorizations at higher digital power levels warrant an increase in maximum digital operating power as proposed by the Joint Parties or support a provisional power increase of some lesser extent

than that requested by the Joint Parties; (3) if the Commission does adopt a power increase, whether it should also establish standards to ensure the lack of interference to the analog signals of stations operating on first adjacent channels; and whether such standards should apply to, i.e., require the protection of, LPFM stations operating on first adjacent channels; and (4) if the Commission does adopt a power increase, whether it should also establish more explicit procedures to resolve digital-into-analog interference complaints.

The Joint Parties' Request and the iBiquity and NPR technical studies are available electronically at *http://fjallfoss.fcc.gov//prod/ecfs/comsrch_v2.cgi* under MM Docket No. 99–325, or from the Commission's duplicating contractor, Best Copy and Printing, Inc. (''BCPI''), 445 12th Street, SW., Room CY–B402, Washington, DC 20554, 1–800–378–3160. The Media Bureau seeks comment on the issues identified above. The Bureau also seeks comment on the Initial Regulatory Flexibility Analysis below. This action is taken under delegated authority pursuant to §§ 0.61 and 0.283 of the Commission's rules, 47 CFR 0.61, 0.283, and the *Second Report and Order,* 22 FCC Rcd at 10383, ¶ 99.

Paperwork Reduction Act

The proposal under consideration may result in a new or revised information collection requirement being adopted by the Commission when the final rules are adopted. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission will seek specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Ex Parte Restrictions

This proceeding has been designated ''permit but disclose'' for purposes of the Commission's ex parte rules, 47 CFR 1.1200–1.1216. Ex parte presentations will be governed by the procedures set forth in 47 CFR 1.1206 applicable to non-restricted proceedings.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the proposed rule as provided in the ''Dates'' paragraph of the item. The Commission will send a copy of the proposed rule, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2] In addition, the proposed rule and IRFA (or summaries thereof) will be published in the **Federal Register**.[3]

A. Need for and Objectives of the Proposed Rules

2. This document seeks comment on issues, discussed *infra* in paragraph 4, concerning the Joint Parties' proposed increase in maximum permissible digital operating power for FM stations utilizing DAB from the current level of 1 percent of a station's authorized analog power (−20 dB) up to a maximum of 10 percent of a station's authorized analog power (−10 dB). The proposed voluntary increase by FM stations to any digital power level up to 10% of a station's authorized analog power would serve to facilitate the ability of FM stations to achieve digital replication of their analog signals and to overcome in-building digital reception problems.

3. This document seeks comment on relevant technical studies submitted by iBiquity and NPR. The iBiquity study, filed in support of the Joint Parties' Request, examined the benefits to digital broadcasting, the compatibility with analog broadcasting, and the potential interference effects resulting from the proposed increase in maximum permissible FM digital operating power. The iBiquity study concluded that an increase in authorized FM digital power levels to 10 percent of a station's authorized analog power would significantly improve digital coverage while avoiding, in the majority of instances, increased interference to reception of analog signals of FM stations operating on first adjacent channels. The NPR study concluded that, although such an increase in authorized FM digital power levels would improve digital coverage in most instances, it could also result in substantial interference to reception of the analog signals of FM stations operating on first and second adjacent channels, and that further testing would be necessary to determine if increased digital operating power should be permitted for FM stations.

4. In response to the record before the Commission in MM Docket 99–325, as well as NPR's announced plans for additional testing of FM DAB,[4] the Media Bureau also solicits comment on the following issues: (1) Whether the Bureau should defer consideration of the Joint Parties' requested power increase until the completion of and comment on the further NPR studies; (2) whether the record in this proceeding, the real world experience gained from over 1,400 FM stations operating for several years in the hybrid mode and the record of experimental authorizations at higher digital power levels warrant an increase in maximum digital operating power as proposed by the Joint Parties or support a provisional power increase of some lesser extent than that requested by the Joint Parties; (3) if the Commission does adopt a power increase, whether it should also establish standards to ensure the lack of interference to the analog signals of stations operating on first adjacent channels, and whether such standards should apply to, i.e., require the protection of, LPFM stations operating on first adjacent channels; and (4) if the Commission does adopt a power increase, whether it should also establish more explicit procedures to resolve digital-into-analog interference complaints.

B. Legal Basis

5. The authority for this notice is contained in Sections 1, 2, 4(i) and (j), 301, 302, 303, 307, 308, and 309 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i) and (j), 301, 302, 303, 307, 308, and 309.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the

[1] *See* 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] *See* 5 U.S.C. 603(a).

[3] *See id.*

[4] *See* Letter from Gregory A. Lewis, Counsel for NPR, to Marlene H. Dortch, Secretary, FCC (Mar. 30, 2009).

proposed rules.[5] The RFA generally defines the term ''small entity'' as encompassing the terms ''small business,'' ''small organization,'' and ''small governmental entity.''[6] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[7] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (''SBA'').[8] The proposed rules and policies potentially will apply to all FM radio broadcasting licensees and potential licensees.

7. The SBA defines a radio broadcasting station that has $7 million or less in annual receipts as a small business.[9] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[10] Included in this industry are commercial, religious, educational, and other radio stations.[11] Radio broadcasting stations which primarily are engaged in radio broadcasting and which produce radio program materials are similarly included.[12] However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under a separate NAICS number.[13] According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of February 19, 2009, about 10,600 (96 percent) of 11,050 commercial radio stations in the United States have revenues of $7 million or less. We note that many radio stations are affiliated with much larger corporations having much higher revenue. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action.

[5] 5 U.S.C. 603(b)(3).

[6] 5 U.S.C. 601(6).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[8] 15 U.S.C. 632.

[9] *See* 13 CFR 121.201, NAICS Code 515112 (changed from 513112 in October 2002).

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

8. In the *Second Report and Order,* the Commission declined to establish a deadline for radio stations to convert to digital broadcasting, 22 FCC Rcd at 10351. Presently, radio stations may choose to commence DAB operation pursuant to Section 73.404 of the Commission's rules, 47 CFR 73.404, which requires in part that licensees provide notification to the Commission within 10 days of commencing DAB operation. The proposed rule change may impose additional reporting or recordkeeping requirements on FM radio stations choosing to upgrade DAB operating power above the current limitation of 1 percent of a station's authorized analog power. For example, licensees choosing to increase DAB operating power above 1 percent of authorized analog power could be required to notify the Commission of the increase in power.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

9. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[14] This document has proposed for commenter evaluation the issue of taking steps to minimize significant impact on small entities, focusing on the four issues, enumerated *supra* in paragraph 6, relevant to the Joint Parties' Request, as well as on any issues raised by the technical studies previously submitted by iBiquity and NPR. To assist in the analysis, commenters are requested to provide information, studies, and/or opinions regarding how small entities would be affected if the Commission were to adopt an increase in maximum digital operating power as proposed by the Joint Parties or a provisional power increase of some lesser extent than that requested by the Joint Parties, and whether such adoption could result in the disparate treatment of small entities with limited financial and/or technical resources. Commenters should also provide information, studies, and/or opinions on alternative approaches to alleviate any potential burdens on small entities.

[14] 5 U.S.C. 603(b).

F. Federal Rules Which Duplicate, Overlap, or Conflict With, the Commission's Proposals

10. None.

Federal Communications Commission.

Robert H. Ratcliffe,

Acting Chief, Media Bureau.

[FR Doc. E9–13865 Filed 6–11–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 0809161218–9950–02]

RIN 0648–AX23

Endangered and Threatened Species: 12–Month Finding for a Petition to Revise Critical Habitat for Hawaiian Monk Seal

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of 12–month finding.

SUMMARY: On July 9, 2008, we (NMFS) received a petition dated July 2, 2008, requesting that we revise the present critical habitat designation for the Hawaiian monk seal (*Monachus schauinslandi*) under the Endangered Species Act (ESA) by expanding the current critical habitat in the Northwestern Hawaiian Islands, and by designating additional critical habitat in the main Hawaiian Islands. We have reviewed, and here provide a summary of the best available information regarding Hawaiian monk seal biology and habitat use. Based on our review, we intend to revise the monk seal's critical habitat, and we are providing our initial thoughts on the habitat features that are essential to the conservation of this species and describing how we intend to proceed with the requested critical habitat revision.

ADDRESSES: Requests for copies of this determination should be addressed to the Assistant Regional Administrator, Protected Resources Division, NMFS, 1601 Kapiolani Blvd, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Lance Smith at (808) 944–2258, e-mail *lance.smith@noaa.gov*; Krista Graham at (808) 944–2238, e-mail *krista.graham@noaa.gov*; or Marta Nammack, (301) 713–1401.

SUPPLEMENTARY INFORMATION: Background documents on the biology of the Hawaiian monk seal, the July 2, 2008, petition requesting revision of its critical habitat, and documents explaining the critical habitat designation process, can be downloaded from *http://www.fpir.noaa.gov/PRD/prd__index.html*, or requested by phone or e-mail from the NMFS staff in Honolulu (area code 808) listed under ''**FOR FURTHER INFORMATION CONTACT**''. The October 3, 2008, 90–day finding in response to the petition and the information received in response to the 90–day finding can be viewed at *www.regulations.gov* by searching for docket number ''NOAA-NMFS–2008–0290''.

Background

On July 9, 2008, we received a petition dated July 2, 2008, from the Center for Biological Diversity, Kahea, and the Ocean Conservancy (Petitioners) to revise the Hawaiian monk seal critical habitat designation (Center for Biological Diversity *et al.*, 2008) under the ESA. Currently designated critical habitat is described below in ''*Listing Status and Existing Critical Habitat Under the ESA*.'' The Petitioners seek to revise critical habitat by adding the following areas in the main Hawaiian Islands (MHI): key beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 200 meters. In addition, The Petitioners request that currently designated critical habitat in the Northwestern Hawaiian Islands (NWHI) be extended to include Sand Island at Midway, as well as ocean waters out to a depth of 500 meters (Center for Biological Diversity *et al.*, 2008).

On October 3, 2008, we published a 90–day finding in response to the petition, finding that the petition presented substantial scientific information indicating that a revision to the current critical habitat designation may be warranted (73 FR 57583; October 3, 2008). The 90–day finding requested that the public submit information by December 2, 2008, to help us determine whether a revision of critical habitat is warranted for the Hawaiian monk seal. The purpose of this 12–month finding is to announce that we intend to proceed with a revision of critical habitat for the monk seal and to provide details on the revision process.

In the following sections, we provide information on the Hawaiian monk seal's listing status and existing critical habitat under the ESA, population status and trend, Hawaiian monk seal biology, summary of the information received from the public in response to our 90–day finding (73 FR 57583; October 3, 2008), our determination that we will proceed with a revision of critical habitat, and the criteria we intend to use for the revision.

Listing Status and Existing Critical Habitat Under the ESA

The Hawaiian monk seal (*Monachus schauinslandi*) was listed as endangered under the ESA in 1976 (41 FR 33922; November 23, 1976). This species occurs throughout the Hawaiian Archipelago and on Johnston Atoll, and has been sighted at other atolls and islands to the south of Hawaii. In 1986, critical habitat was designated for all beach areas, sand spits and islets, including all beach crest vegetation to its deepest extent inland, lagoon waters, inner reef waters, and ocean waters out to a depth of 10 fathoms (18.3 m) around Kure Atoll, Midway Islands (except Sand Island), Pearl & Hermes Reef, Lisianski Island, Laysan Island, Gardner Pinnacles, French Frigate Shoals, Necker Island, and Nihoa Island in the NWHI (51 FR 16047; April 30, 1986). In 1988, critical habitat was extended to include Maro Reef and waters around previously recommended areas out to the 20 fathom (36.6 m) isobath (53 FR 18988; May 26, 1988). A recovery plan was completed in 1983 (NMFS, 1983) and revised in 2007 (NMFS, 2007a). The species is endemic (found nowhere else) to the Hawaiian Archipelago, and is one of the most endangered marine mammals in the United States (NMFS, 2007a).

Hawaiian Monk Seal Biology

The Hawaiian monk seal is a mammal in the Order Carnivora, Family Phocidae, Genus *Monachus*. Only two other species occur in this genus, the recently extinct Caribbean monk seal (*M. tropicalis*) and the critically endangered Mediterranean monk seal (*M. monachus*). Following is an overview of the Hawaiian monk seal's biology, including Range, Population Status and Trends, Natural History, Habitat, and Northwestern Hawaiian Islands vs. Main Hawaiian Islands (a description of differences in monk seal habitat between these two areas).

Range

Hawaiian monk seals are found throughout the Hawaiian Archipelago and on Johnston Atoll. The six main reproductive sites for the species are in the NWHI: Kure Atoll, Midway Islands, Pearl and Hermes Reef, Lisianski Island, Laysan Island, and French Frigate Shoals. Smaller reproductive sites also occur on Necker Island and Nihoa Island, and monk seals have been observed at Gardner Pinnacles and Maro Reef. Monk seals are found throughout the MHI, where births have been documented on most of the major islands (NMFS, 2001, 2007a). In 1994, we relocated 21 adult male monk seals from the NWHI to the MHI in order to reduce male aggression and female deaths at Laysan Island, where males greatly outnumbered females at the time. We have relocated three female monk seals (a juvenile in 1981, a pup in 1991, and an adult in 2009) from the MHI to the NWHI. Thus, we have relocated 21 males from the NWHI to the MHI, and three females from the MHI to the NWHI.

At Johnston Atoll, a tagged yearling male monk seal from Laysan Island was first seen in July 1968 (Schreiber and Kilder, 1969) and remained until at least August 1972. In January 1969, an untagged adult female monk seal arrived on Sand Island, a secondary island within Johnston Atoll, and gave birth to a female pup. The mother-pup pair remained on or near the pupping beach until March 1969, when the pup was weaned and the mother disappeared. The pup remained until 1971 when it died from a deep flesh wound, probably from a shark attack (Amerson and Shelton, 1976). In July 1999, a tagged adult female from French Frigate Shoals arrived at Johnston Atoll and remained there for about a year (NMFS, 2001).

In addition to the above reported natural occurrences of monk seals at Johnston Atoll, a 12 male monk seals have been relocated there from the Hawaiian Archipelago. In 1984, nine adult males were relocated from the NWHI to Johnston Atoll, because of attacks on adult females and immature seals. At least three of these males were still at Johnston Atoll the following year, and at least one male was still there in 1986. In 1989, two adult males were relocated from the NWHI to Johnston Atoll because they were drowning pups. In 2003, an adult male was relocated from the MHI to Johnston Atoll because it was habituated to humans and exhibiting dangerous behavior. No sighting history is available for the latter three monk seals (NMFS unpublished data).

Unconfirmed but probable sightings of Hawaiian monk seals outside the Hawaiian Archipelago and Johnston Atoll have been reported from Palmyra Atoll (1,800 km south of NWHI) and Wake Island (2,000 km southwest of NWHI); two seals were sighted on Palmyra Atoll in 1990, a seal was sighted on Wake Island in early summer 1966, and a tagged seal was sighted on Wake Island in February 1987 (Westlake and Gilmartin, 1990, NMFS unpublished data). Other more poorly-documented sightings have also been reported from Bikini Atoll and Mejit Island in the Marshall Islands (2,400 km southwest of NWHI, NMFS unpublished data).

Population Status and Trends

The best estimate of Hawaiian monk seal total population size is 1,208 seals in 2006 (1,125 in the NWHI, 83 in the MHI; NMFS, 2008a). Additional population information can be found in the annual Stock Assessment Reports (e.g., NMFS, 2006, 2007b, 2008a). The first rangewide beach count surveys of Hawaiian monk seals were conducted in the late 1950s. Beach counts of juveniles and adults (i.e., all seals except pups) declined by 66 percent between the years 1958 and 2006 (Figure I.C.6 in NMFS, 2007a). More recently, beach counts declined rapidly from 1985 to 1993, and then became relatively stable until the current decline began in 2001. Total abundance at the six primary NWHI sites (French Frigate Shoals, Laysan, Lisianski, Pearl and Hermes, Midway, and Kure) is declining at a rate of about four percent per year (NMFS 2007a, 2007b, 2008a).

Since 2000, many sites have shown indications of decline in abundance, apparently due to low juvenile survival. The decline at French Frigate Shoals is of particular consequence to the welfare of the overall population because this site once accounted for over 50 percent of the total non-pup beach counts in the NWHI. While that proportion has now dropped to approximately 25 percent of its observed peak, there are still more seals at French Frigate Shoals than any other island or atoll. More detail on Hawaiian monk seal population status and trends in the NWHI is provided in the recovery plan (NMFS, 2007a). As noted above, in 1994, we relocated 21 adult male monk seals from the NWHI to the MHI in order to reduce male aggression and female deaths at Laysan Island, where males greatly outnumbered females at the time. All female monk seals in the MHI occur there naturally. In 2008, only five of the 21 relocated male monk seals remained in the MHI.

Although monk seals historically occurred throughout the Hawaiian Archipelago, the majority of the population now occurs in the NWHI. Human settlement appears to have largely excluded monk seals from the MHI, although seal bones have been found at archeological sites dating from 1400 - 1700 (Rosendahl, 1994). In 1900, Hilo residents reported that solitary monk seals were seen in the area about once every 10 years (Bailey, 1952). From 1928 to 1956, seven monk seal sightings were documented in the MHI (Kenyon and Rice, 1959), and Niihau residents reported that seals appeared there in the 1970s. By 1994 there was a small naturally-occurring population of male and female monk seals in the MHI. This population appeared to be growing, and at least six pups had been born (one in 1962, and five between 1988 and 1993). Since the mid–1990s, an increasing number of documented sightings and annual births of monk seal pups have occurred in the MHI. Combined aerial and ground surveys in the MHI counted 45 hauled-out monk seals in 2000, and 52 in 2001 (Baker and Johanos, 2004). Sightings in the MHI tallied 77 individually identifiable monk seals in 2005 (NMFS, 2007b), and 83 in 2006 (NMFS, 2008a). Together, these observations suggest that monk seals are recolonizing the MHI.

Natural History

Hawaiian monk seals are wide-ranging, air-breathing predators that forage underwater, preying primarily on small benthic fishes, cephalopods (e.g., octopus), and crustaceans (Goodman-Lowe, 1998). They spend the majority of their time in the ocean, where they are highly mobile and may have very large home ranges (Antonelis *et al.*, 2006). Monk seals are typical large predators, in that they can rapidly cover large areas in search of food. Individuals may travel hundreds of miles in a few days (Littnan *et al.*, 2007) and dive to 500 m (1,600 ft; Parrish *et al.*, 2002). Monk seals haul out on land to rest, molt, pup (give birth), and nurse. Resting may also occur at sea or in shallow, submerged caves. Monk seals are often solitary, both on land and in the water, but may congregate in favorable haul-out areas (Antonelis *et al.*, 2006). Adult monk seals reach a length of 2.3 m (7.5 ft) and weigh up to 273 kg (600 lb). Unlike most other pinnipeds, monk seals completely molt, whereby the entire layer of pelage (skin and hair) is shed annually. The old pelage strips away, leaving a dark grey coat underneath. Pups are black until first molt, and mostly grey thereafter, although coloration varies by individual and with age. When monk seals stay at sea for an extensive period, they may develop a red or green tinge from algal growth on their pelage (Kenyon and Rice, 1959).

It is thought that Hawaiian monk seals have a lifespan of up to 30 years. Females reach breeding age at about 6 to 11 years of age, depending on their condition, and give birth no more than once annually. Mating occurs at sea, and gestation is thought to be approximately 11 months. Monk seal births are most common between February and August, peaking in March and April at Laysan Island. Females give birth to a single pup and nurse it for about 6 weeks, followed by an abrupt weaning, when the mother abandons the pup (Johanos *et al.*, 1994). At least several months are required for the pup to learn to forage successfully on its own, during which time it survives on fat stores built up during nursing, resulting in considerable weight loss. Juveniles (up to 3 years old) are typically longer but thinner than recently-weaned pups, and juveniles in the NWHI typically do not regain their weaning weight until approximately 2 years of age (Johanos *et al.*, 1994). Male aggression, in which a single male or multiple males repeatedly attempt to mount and mate with a female or immature seal, is most common where males outnumber females, and sometimes results in death or severe injury to the targeted seal. Individual adult males sometimes attack pups in the same manner, also sometimes killing the pup (Hiruki *et al.*, 1993).

Habitat

While Hawaiian monk seals spend most of their time in the water, they frequently haul out on land to rest, molt, pup (give birth), and nurse. Monk seals may remain at sea for several days or more at a time, but resting on land is necessary to conserve energy. Resting is commonly on sandy beaches, but may also occur on rocky shores, rock ledges, emergent reefs, and even shipwrecks (Antonelis *et al.*, 2006). Monk seals may take shelter from wind and rain under shoreline vegetation. Resting on land is typically done for a few hours to several days at a time, after which the monk seal returns to the water to continue foraging. When ocean conditions are rough, monk seals may spend a greater proportion of time resting on land. Hauling-out on land is also required for molting, when old pelage is shed. Molting is an annual process taking 1 to 2 weeks, during which time the monk seal usually remains on land (Kenyon and Rice, 1959).

Pupping and nursing areas are usually sandy beaches adjacent to shallow

protected water (Westlake and Gilmartin, 1990). Individual females appear to favor certain pupping locations, returning to them year after year. Pregnant females come ashore a few days before giving birth to a pup weighing approximately 16 kg (35 lb). Pups nurse for 5 to 6 weeks (Johanos *et al.*, 1994), and weigh 50 - 100 kg (110 - 220 lb) at weaning. During nursing, the mother-pup pair remain close to each other, and the mother is protective of her pup. Although the pup is able to swim at birth, nursing is done on land, and the mother-pup pair usually remain on land for the first few days after the pup is born. The mother gradually begins swimming with her pup in the shallows, returning to the general area around the pupping site. As weaning approaches, the mother-pup pair spend more time in the water, venturing further away from the pupping site. After weaning, pups typically remain in the shallows near their nursing areas for several weeks before venturing into deeper foraging areas (Kenyon and Rice, 1959; Henderson and Johanos, 1988).

Monk seals are generalists that forage primarily over low-relief substrates such as sand and talus. Live fish are generally the preferred prey, and over 150 fish species have been recorded in the monk seal diet (Iverson *et al.*, 2006). NWHI camera studies have shown that adult male monk seals forage mainly on sand terraces and talus slopes 50 - 100 m (160 - 325 ft) deep around their home atoll and nearby seamounts (Parrish and Littnan, 2008). Premium adult foraging habitat is comprised of large, loose talus fragments, which the seals move to reach the hiding prey underneath (Parrish *et al.*, 2000). Studies in the NWHI (Parrish *et al.*, 2002; Stewart *et al.*, 2006) have shown that adult monk seals may forage at 300 - 500 m (1,000 - 1,600 ft), sometimes visiting patches of deep corals (Parrish *et al.*, 2002). Recent surveys of deep fish assemblages across seamounts of the NWHI show a pattern of reduced fish biomass at sites close to colonies of monk seals (Parrish, 2009). Juvenile monk seals (1 - 3 years old) forage both within shallow atoll lagoons 10 - 30 m (30 - 100 ft) and on deep reef slopes (50 - 100 m/160 - 325 ft), usually over sand rather than talus. Juvenile seals likely do not yet have the size or experience to engage in the large talus-foraging behavior exhibited by adults (Parrish *et al.*, 2005).

Although much less information is available for monk seals in the MHI, 11 juvenile and adult monk seals were tracked there in 2005 using satellite-linked radio transmitters showing location but not depth. This study indicated that seals usually remained in nearshore waters within the 200 m (650 ft) isobath. As in the NWHI, this study suggested that monk seals in the MHI forage mainly in deeper, low-relief (talus, sand) areas, commuting over shallower, high-relief (coral reefs, rock outcrops) without foraging (Littnan *et al.*, 2007). However, as in the NWHI, shallow areas adjacent to pupping areas are important for pups to develop foraging behavior. Otherwise, coral reefs and other high-relief shallows are not usually primary monk seal foraging habitat. Generally, juvenile and adult monk seals bypass these shallow high-relief substrates in transit to their primary foraging areas over low-relief substrates in deeper water, sometimes making no attempt to hunt the same fish species in the shallows that they were actively hunting in the deep (Parrish and Littnan, 2008).

In summary, the physical and biological habitat features that support resting, reproduction, and foraging are essential for the conservation of this species. For the Hawaiian monk seal, essential habitat includes terrestrial and marine areas. Terrestrial areas include both resting and reproductive habitat. Resting habitat consists of nearshore or emergent surfaces where monk seals can haul out, whereas reproductive habitat consists of a subset of resting habitat on sandy beaches that are also suitable for pupping and nursing. Marine areas include foraging habitat for pups, juveniles, and adults. Pup foraging habitat consists of shallow areas adjacent to pupping beaches where pups become accustomed to the marine environment and begin learning to forage on their own. Juveniles and adults forage widely, primarily in deeper areas.

Northwestern Hawaiian Islands vs. Main Hawaiian Islands

The Hawaiian monk seal consists of one population distributed throughout the Hawaiian Archipelago. That is, there is no evidence that monk seals occurring in any part of the archipelago are genetically distinct from those elsewhere in the archipelago (Schultz *et al.*, 2008). This suggests that the population is genetically well-mixed, with individual seals sometimes moving between the NWHI and the MHI, which has been confirmed with resightings of flipper-tagged or otherwise identifiable (e.g., scar patterns; Littnan *et al.*, 2007). However, monk seals in the MHI are typically in better physical condition than those in the NWHI. For example, weaned pups in the MHI are larger and fatter than those in the NWHI, which is thought to reflect better foraging conditions in the MHI (Baker and Johanos, 2004; Baker *et al.*, 2006). Although the NWHI is one of the largest and best-protected natural areas in the world, and the MHI are populated by over a million people, the latter appears to currently provide superior monk seal foraging conditions.

Despite its large human population, the MHI may currently provide better monk seal foraging conditions than the NWHI because: (1) There are only about one-tenth the number of seals in the MHI than in the NWHI, thus the availability of prey may be higher per seal in the MHI than the NWHI (Baker and Johanos, 2004); and (2) Large sharks, jacks and other demersal fish compete directly with monk seals, but are much less abundant in the MHI than the NWHI (Parrish *et al.*, 2008). Competition is limited between humans and monk seals in the MHI because seals prefer small (usually < 20 cm/8 in) eels, wrasses, and other benthic species not commonly sought by fishermen, (Parrish *et al.*, 2000). However, while foraging conditions are currently better in the MHI than the NWHI for monk seals, pollution and runoff pose health hazards to the species in the MHI not found in the NWHI (Littnan *et al.*, 2007).

As described above in *Population Status and Trends*, since 1990, the total number of Hawaiian monk seals has decreased, while simultaneously the number of monk seals in the MHI appear to have increased (NMFS, 2006, 2007b, 2008a). As described in the above paragraph, foraging conditions currently appear better in the MHI than in the NWHI (Parrish et el., 2000, 2008), likely resulting in better physical condition and higher survival of seals in the MHI than in the NWHI (Baker and Johanos; 2004; NMFS, 2007a). In addition, sea level rise may reduce or eliminate monk seal haul-out habitat more rapidly in the low-lying NWHI than the MHI (Baker *et al.*, 2006). Given the overall downward trend of the species (see *Population Status and Trends* above), generally poor physical condition and survival of seals in the NWHI, and proportionally greater sea level effects on the NWHI than the MHI, the MHI appears essential for the survival and recovery of this species.

Summary of Information Received

In our 90–day finding (73 FR 5l7583; October 3, 2008) in response to the petition (Center for Biological Diversity *et al.*, 2008), we solicited information from the public pertaining to the Hawaiian monk seal's essential habitat needs. The 90–day finding, and the information we received in response to it, can be viewed at www.regulations.gov by searching for

docket number ''NOAA-NMFS–2008–0290''. The great majority of the monk seal habitat-related information received was based on programs and studies conducted, funded, or supported by NMFS; therefore, we did not receive any new information on the monk seal's essential habitat needs. The information received is summarized below.

Comment 1: Over 100 comments argued that the MHI provide essential habitat for the Hawaiian monk seal because: (1) the MHI component of the monk seal population has increased in recent years while simultaneously the overall population has decreased; (2) monk seals in the MHI are in better physical condition than those in the NWHI; and (3) monk seal habitat loss is likely to be much more rapid in the NWHI than in the MHI in the near future due to sea level rise.

Response: We concur that the MHI component of the monk seal population appears to have increased in recent years while simultaneously the overall population has decreased (see ''*Population Size and Trends*'' above), that monk seals in the MHI are in better physical condition than those in the NWHI, and that monk seal haul-out habitat loss is likely to be more rapid in the NWHI than in the MHI in the future due to sea level rise (see ''*Northwestern Hawaiian Islands vs. Main Hawaiian Islands*'' above). For these three reasons, and also because of the current precarious state of the Hawaiian monk seal, we agree that monk seal habitat within the MHI is essential for the survival and recovery of the species.

Comment 2: Several comments argued that the MHI do not provide essential habitat for the Hawaiian monk seal, because: (1) monk seals are not indigenous to the MHI; and (2) various human threats to monk seals in the MHI outweigh benefits to the species of MHI habitat.

Response: Little evidence has been found that monk seals occurred in the MHI before the arrival of humans approximately 2,000 years ago, or during pre-European times before the late 1700s. However, before the arrival of humans, monk seal remains would typically have occurred on or near coastlines where wave action and erosion likely would have prevented preservation of remains. After the arrival of humans, monk seals may have been consumed by humans, in which case monk seal bones would likely occur in middens. However, if the seals were quickly extirpated after the arrival of humans, this would reduce the likelihood of finding bone fragment evidence in middens. An archeological dig of a midden on the Big Island identified monk seal bones, and estimated that the bones were deposited during the years 1400 to 1700 (Rosendahl, 1994). Furthermore, monk seals commonly travel long distances between atolls or islands, and even between the NWHI and MHI (Littnan *et al.*, 2007). Thus, before the arrival of humans, it is highly unlikely that monk seals occurred only in the NWHI, while the MHI were vacant of both monk seals and humans. Finally, large, easily-hunted animals such as seals are typically extirpated or driven to extinction when humans arrive in an area for the first time (Grayson, 2001). Arrival of humans in Hawaii likely resulted in a rapid reduction in monk seal numbers in the MHI, such that the species was mostly restricted to the NWHI until recently (Baker and Johanos, 2004). For these reasons, we believe that the Hawaiian monk seal commonly occurred in the MHI before the arrival of humans, and that this species is indigenous to at least the entire Hawaiian Archipelago.

We agree that the Hawaiian monk seal faces a multitude of human threats in the MHI. The recovery plan identifies the most serious human threats to monk seals in the MHI as infectious diseases, fisheries interactions, habitat loss, and human interactions (NMFS, 2007a). In the MHI, monk seals forage near shore, and they haul out on beaches near sources of pathogens associated with human population centers, sewage spills, and stream mouths. Of 12 dead monk seals that were thoroughly necropsied in the MHI between 1996 and 2006, four appeared to have died of infectious disease (Littnan *et al.*, 2007). In the MHI from 1989 to 2007, 44 monk seals were confirmed to be hooked by fishing gear (one of which died, possibly from the hooking), another five entangled in lay gillnets (three of which drowned in the gillnets), and one seal hooked and entangled (but survived). Many hooks are removed from monk seals by the monk seal response program, most often resulting in healing of the wound and recovery of the monk seal. However, entanglement in lay gillnets often results in the drowning of the monk seal (NMFS, 2008b). Monk seal haul-out beaches in the MHI are being degraded or lost by development adjacent to the beaches, and increasing human activity on the beaches. The high and ever-increasing human use of MHI beaches and coastlines results in humans frequently interacting with monk seals, both unintentionally and intentionally (NMFS, 2007a). However, despite the numerous anthropogenic threats to monk seals in the MHI, the MHI component of the monk seal population appears to have increased in recent years, and monk seals in the MHI are generally in good physical condition. In contrast, the NWHI component of the monk seal population continues to decrease, and monk seals in the NWHI are often in poor physical condition (see ''Population Size and Trends'' and ''*Northwestern Hawaiian Islands vs. Main Hawaiian Islands*'' above). Thus, although monk seals are more often exposed to infectious diseases in the MHI than in the NWHI, the MHI appear to currently provide a favorable environment for monk seals. In addition, the loss of monk seal haul-out habitat is likely to occur more rapidly in the NWHI than the MHI due to sea level rise (see ''*Northwestern Hawaiian Islands vs. Main Hawaiian Islands*'' above). For these reasons, we believe that the benefits of MHI habitat to the monk seal outweigh the various human threats to monk seals in the MHI.

Comment 3: Over 100 comments argued that areas out to a depth of 500 m (1,625 ft) in the NWHI provide essential foraging habitat for the Hawaiian monk seal.

Response: As discussed above in ''*Habitat*,'' studies in the NWHI have documented adult monk seal foraging to a maximum depth of approximately 500 m (1,600 ft; Parrish *et al.*, 2002; Stewart *et al.*, 2006). The relative importance of these deep foraging areas, compared to more frequently-used shallower areas, is currently unknown.

Comment 4: Several comments did not provide any information about habitat use by the Hawaiian monk seal, but rather expressed opinions about the effects of revising monk seal critical habitat on various human activities, such as beach use, fishing, economics, national security, and natural resource management.

Response: The economic, national security, and other effects of revising monk seal critical habitat will be addressed in the forthcoming proposed rule.

12–Month Determination on Revision of Critical Habitat

Since critical habitat for the Hawaiian monk seal was designated in 1986 (51 FR 16047; April 30, 1986) and revised in 1988 (53 FR 18988; May 26, 1988), a great deal of new information has become available regarding habitat use by this species, such as the literature cited in the petition (Center for Biological Diversity *et al.*, 2008) and in the Recovery Plan (NMFS, 2007a). For example, studies of monk seal foraging made possible by new technology (e.g.,

Parrish *et al.* 2000, 2002, 2005, 2008; Littnan *et al.*, 2007) have resulted in substantial progress since 1988 in understanding how this species uses foraging habitat (Parrish and Littnan, 2008). Also, since critical habitat was designated in 1988, monk seals appear to have begun recolonizing the MHI (Baker and Johanos, 2004; Baker *et al.*, 2006; NMFS, 2007a). Other information has also become available about other aspects of monk seal life history and habitat use (summarized in NMFS, 2007a). Because of this new information regarding habitat use by the Hawaiian monk seal that has become available since critical habitat for the species was revised in 1988 (53 FR 18988; May 26, 1988), we will proceed with a revision of critical habitat for the species.

How Does NMFS Intend To Proceed?

We intend to undertake rulemaking to revise critical habitat for the Hawaiian monk seal. Critical habitat is defined by section 3 of the ESA as ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of section 1533 of this title, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 1533 of this title, upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Further, our critical habitat regulations (50 CFR 424.12(c)) state that critical habitat will be defined by specific limits using reference points and lines on standard topographic maps of the area. Finally, section 4(b)(2) of the ESA requires that we consider economic, national security, and other impacts of designating critical habitat before designating critical habitat.

Based on the above definition and guidance, the following steps will be followed to propose the revision of designated critical habitat for the Hawaiian monk seal: (1) Determine the geographical area occupied by the species at the time of listing; (2) Identify the physical or biological features essential to the conservation of the species; (3) Delineate areas within the geographical area occupied by the species that contain these features, and that may require special management considerations or protections; (4) Delineate any areas outside of the geographical area occupied by the species that are essential for the conservation of the species; and (5) Conduct economic, national security, and other analyses to determine if any areas identified in steps 3 and 4 could be excluded from critical habitat consideration under section 4(b)(2) of the ESA. Steps 1 and 2 above are included in this 12–month finding, as described below. Steps 3 - 5 will be completed in the forthcoming proposed rule.

Step 1: Determine Geographical Area Occupied by the Species at the Time of Listing: The final rule listing the Hawaiian monk seal as endangered, published on November 23, 1976 (41 FR 51611), stated that the ''Hawaiian monk seal is found throughout the Hawaiian Archipelago,'' with no mention of areas outside the archipelago. For reasons described above in ''*Range*,'' in 2001, we determined that Johnston Atoll is within the range of the Hawaiian monk seal (NMFS, 2001). Therefore, the geographical area occupied by the Hawaiian monk seal at the time of listing (1976) is considered to be the Hawaiian Archipelago and Johnston Atoll.

Step 2: *Identify Physical or Biological Features Essential to Conservation:* In this step, the physical and biological features essential to conservation are identified (hereafter referred to as ''essential features''). Section 3 of the ESA (16 U.S.C. 1532(3)) defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean: ''to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.'' Our critical habitat regulations (50 CFR 424.12(b)) state that essential features ''include, but are not limited to the following: (1) Space for individual and population growth, and for normal behavior; (2) Food, water, air, light, minerals or other nutritional or physiological requirements; (3) Cover or shelter; (4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally; (5) Habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.''

The regulations also instruct us to ''focus on the principal biological or physical constituent elements within the defined area that are essential to the conservation of the species. Known primary constituent elements shall be listed with the critical habitat description'' (50 CFR 424.12(b)). Thus, the essential features will be defined here in terms of primary constituent elements (PCEs). The PCEs can include sites used by the listed species for resting, reproduction, and feeding (examples given in the regulations include ''nesting grounds, spawning sites, feeding sites''), and physical features of the species' habitat (examples given in the regulations include ''geological formation, vegetation type, tide, and specific soil types''; 50 CFR 424.12(b)).

As described above in ''*Habitat*,'' the physical and biological habitat features that support resting, molting, reproduction, and foraging are essential for the conservation of this species. For the Hawaiian monk seal, essential habitat includes terrestrial and marine areas. Terrestrial areas include resting, molting, and reproductive habitat. Resting and molting habitat consists of nearshore or emergent surfaces where monk seals can haul out, whereas reproductive habitat consists of a subset of resting and molting habitat (i.e., sandy beaches suitable for pupping and nursing). Marine areas include foraging habitat for pups, juveniles, and adults. Pup foraging habitat consists of shallow areas adjacent to pupping beaches where pups become accustomed to the marine environment and begin learning to forage on their own. Juveniles and adults forage widely, primarily in deeper areas. Thus, at this time, we believe that the following PCEs constitute the physical and biological features essential to conservation of the Hawaiian monk seal: (1) sandy beaches preferred by monk seals for pupping and nursing; (2) marine areas less than 20 m depth adjacent to pupping and nursing beaches where young pups learn to forage; (3) marine areas approximately 20 - 200 m depth in the MHI, and approximately 20–500 m depth in the NWHI, preferred by juvenile and adult monk seals for foraging; (4) low levels of unnatural disturbance; and (5) high prey quantity and quality.

Steps 3 - 5: Steps 3 - 5 of the critical habitat proposed revision process will be completed in the forthcoming proposed rule. In the proposed rule, the PCEs could differ slightly from the PCEs identified above, but these identified PCEs will give the public an idea of what we are considering. When we publish our proposed rule, we will solicit public comments on it and incorporate comments as appropriate.

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All references are available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 8, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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Notices

Federal Register
Vol. 74, No. 112
Friday, June 12, 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

Natural Resources Conservation Service

RIN 0578–AA48

Conservation Practice Technical Assistance

AGENCY: Natural Resources Conservation Service, United States Department of Agriculture.

ACTION: Notice; request for comment.

SUMMARY: Section 1242(h) of the Food Security Act of 1985, as amended by the Food, Conservation, and Energy Act of 2008 (2008 Act), requires that the Natural Resources Conservation Service (NRCS): (1) Review conservation practice standards, including engineering design specifications, in effect on June 18, 2008; (2) ensure the completeness and relevance of the standards to local agricultural, forestry, and natural resource needs including specialty crops, native and managed pollinators, bioenergy crop production, forestry, and other such needs as determined by the Secretary; and (3) ensure, to the maximum extent practicable, that the standards provide for the optimal balance between meeting site-specific conservation needs and minimizing risks of design failure and associated costs of construction and installation. NRCS conducted an internal review of the conservation practice standards and met with various stakeholder groups, as required by section 1242(h)(2), to obtain their input about how to improve the completeness and relevance of the standards. NRCS is hereby notifying the public of the results of the preliminary review and requests comments from the public about how to improve the conservation practice standards to meet the goals and objectives of Section 1242(h) of the Food Security Act of 1985, as amended.

DATES: *Comment Date:* Submit comments on or before August 11, 2009.

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

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending comments electronically.
- *Mail:* Norman Widman, National Agronomist, Department of Agriculture, Natural Resources Conservation Service, Conservation Practice Standard Comments, Post Office Box 2890, Washington, DC 20013.
- *Fax:* (202) 720–5334.
- *E-mail: nrcscpta2008@wdc.usda.gov.*
- *Hand Delivery:* USDA South Building, 1400 Independence Avenue, SW., Room 5234, Washington, DC 20250, between 9 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. Please ask the guard at the entrance to the South Building to call (202) 720–4630 in order to be escorted into the building.
- This notice may be accessed via Internet. Users can access the NRCS homepage at *http://www.nrcs.usda.gov/;* select the *Farm Bill* link from the menu; select *Notices.* Persons with disabilities who require alternative means for communication (braille, large print, audio tape, etc.) should contact the USDA TARGET Center at: (202) 720–2600 (voice and TDD).

FOR FURTHER INFORMATION CONTACT: Norman Widman, National Agronomist, Department of Agriculture, Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890; or e-mail: *norm.widman@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: NRCS provides technical assistance to clients through the conservation planning process. The planning process involves: (1) Determining the client goals and resource concerns (conservation needs), (2) developing of treatment options, (3) recording the client's decisions, and (4) evaluating the conservation treatment. The conservation practice standards used to apply conservation contain information on why and where the practice is applied, and sets forth the minimum technical criteria that must be met during the application of that practice in order for it to achieve its intended purposes. The engineering design specifications address how the practice is to be applied or installed and are developed for site-specific conditions. Conservation practices are designed to address the treatment of resource needs and are not directed to specific types of farming or commodities.

Agricultural and environmental groups expressed concern during the development of the 2008 Act that NRCS conservation practice standards did not adequately address or have relevance to particular types of farming operations or natural resource needs. As a result of those concerns, Section 2706 of the 2008 Act amended Section 1242(h)(1) of the Food Security Act of 1985 to require the Secretary of Agriculture to review conservation practice standards, including engineering design specifications, in effect on June 18, 2008; ensure, to the maximum extent practicable, the completeness and relevance of the standards to local agricultural, forestry, and natural resource needs, including specialty crops, native and managed pollinators, bioenergy crop production, forestry, and such other needs as are determined by the Secretary; and ensure that the standards provide for the optimal balance between meeting site-specific conservation needs and minimizing risks of design failure and associated costs of construction and installation. Section 1242(h)(2) of the Food Security Act of 1985, as amended, requires the Secretary, in conducting the review of the conservation practice standards, to consult with eligible participants, crop consultants, cooperative extension and Land Grant Universities, nongovernmental organizations, and other qualified entities. Additionally, if any revisions to the conservation practice standards are determined necessary, the Secretary is required to establish an administrative process for expediting the revisions.

During July 2008 through September 2008, NRCS conducted a preliminary internal review of all conservation practice standards (at both the national and State levels) by technical discipline leaders to evaluate the practice applicability to organic farming, specialty crops, precision agriculture, pollinators, bio-energy production, and forestry. Through its internal review, NRCS made the following preliminary determinations:

1. NRCS conservation practice standards have the flexibility to address the resource needs on all types of farming operations and resource interests, including those specified in

section 1242(h). NRCS will modify selected practices to better clarify their relevance to local agricultural, forestry, and natural resource needs, including specialty crops, native and managed pollinators, and bioenergy crop production.

2. Practices are designed to balance design, construction, and installation with minimal risk of failure.

3. NRCS field staff would benefit from additional training to better apply our current practices on non-traditional farming operations.

4. NRCS needs to recognize the special needs of the non-traditional farming operations when payment schedules are developed.

In addition to its internal review, NRCS met with several different groups representing organic agriculture, specialty crop production, forestry, pollinators, and precision farming to discuss our conservation practice standards and technical assistance. This meeting took place in December 2008 at the NRCS National Headquarters in Washington, DC. The results of the national and State conservation practice review were discussed with those present, and they were asked to send comments concerning the review by January 9, 2009. No comments were received.

In order to obtain the widest possible input and to ensure NRCS fully meets the intent and spirit of the Section 1242(h) conservation practice review requirements, NRCS is now seeking further comments from the public on its conservation practice standards through August 11, 2009. A list of all the USDA–NRCS National Conservation Practice Standards (166) is attached as an Appendix to this Notice. The specific content of the standards can be found at the following URL: *http://www.nrcs.usda.gov/technical/standards/nhcp.html*. NRCS requests public input on the relevance of any particular conservation practice to meet the needs the different types of farming operations and resource needs, or how any particular conservation practice can be modified or improved to achieve such goals. NRCS will publish in the **Federal Register** the final results of the conservation practice review and the modifications made in response to such review.

As required by section 1242(h)(3), NRCS has a process to expedite any revisions to the conservation practice standards necessitated by this review. This process includes the following options: (1) Revising the conservation practice at the national level by the national technical leader, (2) revising the conservation practice at the State level by the State technical leader, or (3) the State Conservationist can request a conservation practice variance from the NRCS National Headquarters.

Signed this 4th day of June, 2009, in Washington, DC.

Dave White,

Chief, Natural Resources Conservation Service.

Appendix

List of NRCS National Conservation Practice Standards; *http://www.nrcs.usda.gov/technical/standards/nhcp.html*.

Code	Conservation practice title
431	Above Ground, Multi-Outlet Pipeline (ft).
472	Access Control (ac).
560	Access Road (ft).
309	Agrichemical Handling Facility (no).
311	Alley Cropping (ac).
591	Amendments for Treatment of Agricultural Waste.
365	Anaerobic Digester, Ambient Temperature (no).
366	Anaerobic Digester, Controlled Temperature (no).
316	Animal Mortality Facility (no).
575	Animal Trails and Walkways (ft).
450	Anionic Polyacrylamide (PAM) Erosion Control (ac).
397	Aquaculture Ponds (ac).
370	Atmospheric Resources Quality Management (ac),
310	Bedding (ac).
314	Brush Management (ac).
322	Channel Bank Vegetation (ac).
584	Channel Stabilization (ft).
326	Clearing & Snagging (ft).
360	Closure of Waste Impoundments (no).
317	Composting Facility (no).
327	Conservation Cover (ac).
328	Conservation Crop Rotation (ac).
656	Constructed Wetland (no).
332	Contour Buffer Strips (ac).
330	Contour Farming (ac).
331	Contour Orchard and Other Fruit Areas (ac).
340	Cover Crop (ac).
342	Critical Area Planting (ac).
589A	Cross Wind Ridges (ac).
589C	Cross Wind Trap Strips (ac).
348	Dam, Diversion (no).
402	Dam (no & ac-ft).
324	Deep Tillage (ac).
356	Dike (ft).
362	Diversion (ft).
554	Drainage Water Management (ac).
432	Dry Hydrant (no).
647	Early Successional Habitat Development/Mgt. (ac).
592	Feed Management (no & au).
382	Fence (ft).
386	Field Border (ft).
393	Filter Strip (ac).

Code	Conservation practice title
394	Firebreak (ft).
396	Fish Passage (mi).
398	Fish Raceway or Tank (ft & ft^3).
399	Fishpond Management (no).
511	Forage Harvest Management (ac).
384	Forest Slash Treatment (ac).
666	Forest Stand Improvement (ac).
655	Forest Trails and Landings (ac).
383	Fuel Break (ac).
410	Grade Stabilization Structure (no).
412	Grassed Waterway (ac).
548	Grazing Land Mechanical Treatment (ac).
561	Heavy Use Area Protection (ac).
422	Hedgerow Planting (ft).
603	Herbaceous Wind Barriers (ft).
423	Hillside Ditch (ft).
320	Irrigation Canal or Lateral (ft).
388	Irrigation Field Ditch (ft).
464	Irrigation Land Leveling (ac).
552	Irrigation Regulating Reservoir (no).
436	Irrigation Storage Reservoir (no & ac-ft).
441	Irrigation System Microirrigation (no & ac).
442	Irrigation System Sprinkler (no & ac).
443	Irrigation System Surface & Subsurface (no & ac).
447	Irrigation System, Tailwater Recovery (no).
428A	Irrigation Water Conveyance, Ditch and Channel Lining, Plain Concrete (ft).
428B	Irrigation Water Conveyance, Ditch and Channel Lining, Flexible Membrane (ft).
428C	Irrigation Water Conveyance, Ditch and Channel Lining, Galvanized Steel (ft).
430AA	Pipeline, Aluminum Tubing (ft).
430BB	Pipeline, Asbestos-Cement (ft).
430CC	Pipeline, Nonreinforced Concrete (ft).
430DD	Pipeline, High-pressure, Underground, Plastic (ft).
430EE	Pipeline, Low-pressure, Underground, Plastic (ft).
430FF	Pipeline, Steel (ft).
430GG	Pipeline, Reinforced Plastic Mortar (ft).
449	Irrigation Water Management (ac).
460	Land Clearing (ac).
543	Land Reclamation, Abandoned Mined Land (ac).
544	Land Reclamation, Currently Mined Land (ac).
453	Land Reclamation, Landslide Treatment (no & ac).
455	Land Reclamation, Toxic Discharge Control (no).
466	Land Smoothing (ac).
468	Lined Waterway or Outlet (ft).
634	Waste Transfer (no).
457	Mine Shaft & Adit Closing (no).
482	Mole Drain (ft).
353	Monitoring Well (ea).
484	Mulching (ac).
379	Multi-Story Cropping.
590	Nutrient Management (ac).
500	Obstruction Removal (ac).
582	Open Channel (ft).
512	Pasture & Hay Planting (ac).
595	Pest Management (ac).
516	Pipeline (ft).
378	Pond (no).
521C	Pond Sealing or Lining, Bentonite Sealant (no).
521A	Pond Sealing or Lining, Flexible Membrane (no).
521B	Pond Sealing or Lining, Soil Dispersant (no).
521D	Pond Sealing or Lining, Compacted Clay Treatment (no).
462	Precision Land Forming (ac).
338	Prescribed Burning (ac).
409	Prescribed Forestry (ac).
528	Prescribed Grazing (ac).
533	Pumping Plant (no).
550	Range Planting (ac).
562	Recreation Area Improvement (ac).
566	Recreation Land Grading and Shaping (ac).
568	Recreation Trail and Walkway (ft).
329	Residue and Tillage Management, No Till/Strip Till/Direct Seed (ac).
345	Residue and Tillage Management, Mulch Till (ac).
346	Residue and Tillage Management, Ridge Till (ac).
344	Residue Management, Seasonal (ac).
643	Restoration and Management of Rare or Declining Habitats (ac).

Code	Conservation practice title
391	Riparian Forest Buffer (ac).
390	Riparian Herbaceous Cover (ac).
555	Rock Barrier (ft).
558	Roof Runoff Structure (no).
557	Row Arrangement (ac).
570	Runoff Management System (no & ac).
610	Salinity and Sodic Soil Management (ac).
350	Sediment Basin (no).
646	Shallow Water Development and Management (ac).
381	Silvopasture Establishment (ac).
527	Sinkhole and Sinkhole Area Treatment (no).
632	Solid/Liquid Waste Separation Facility.
572	Spoil Spreading (ac).
574	Spring Development (no).
580	Streambank and Shoreline Protection (ft).
578	Stream Crossing (no).
395	Stream Habitat Improvement and Management (ac).
585	Stripcropping (ac).
587	Structure for Water Control (no).
606	Subsurface Drain (ft).
607	Surface Drainage, Field Ditch (ft).
608	Surface Drainage, Main or Lateral (ft).
609	Surface Roughening (ac).
600	Terrace (ft, m).
612	Tree/Shrub Establishment (ac).
490	Tree/Shrub Site Preparation (ac).
660	Tree/Shrub Pruning (ac).
620	Underground Outlet (ft).
645	Upland Wildlife Habitat Management (ac).
635	Vegetated Treatment Area (ac).
601	Vegetative Barrier (ft).
630	Vertical Drain (no).
367	Waste Facility Cover (no).
313	Waste Storage Facility (no).
629	Waste Treatment.
359	Waste Treatment Lagoon (no).
633	Waste Utilization (ac).
636	Water Harvesting Catchment (no).
614	Watering Facility (no).
638	Water and Sediment Control Basin (no).
640	Waterspreading (ac).
642	Water Well (no).
351	Well Decommissioning (no).
355	Well Water Testing (no).
658	Wetland Creation (ac).
659	Wetland Enhancement (ac).
657	Wetland Restoration (ac).
644	Wetland Wildlife Habitat Management (ac).
380	Windbreak/Shelterbelt Establishment (ft).
650	Windbreak/Shelterbelt Renovation (ft).

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BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Contract Proposal (NOCP) for Payments to Eligible Advanced Biofuel Producers

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the intention of the U.S. Department of Agriculture to enter into Contracts to make payments to Eligible Advanced Biofuel Producers to support and ensure an expanding production of Advanced Biofuels. This program is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234). In addition, this program is intended to support Federal policy calling for greater production and use of Advanced Biofuels. The Agency will authorize up to $30 million in funding for this program for fiscal year (FY) 2009.

DATES: Applications for participating in this program for Fiscal Year 2009 must be received between June 12, 2009 and August 11, 2009.

The comment period for information collection under the Paperwork Reduction Act of 1995 continues through August 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 the USDA, Rural Development State Office, Renewable Energy Coordinator. Submit applications to the Rural Development State Office in the State in which the applicant's principal office is located.

USDA Rural Development State Renewable 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.*

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.*

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.*

Delaware

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

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720. (808) 933–8313. *Tim.Oconnell@hi.usda.gov.*

Florida

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Georgia

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Guam

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720. (808) 933–8313. *Tim.Oconnell@hi.usda.gov.*

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Teresa Bomhoff, USDA Rural Development, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309. (515) 284–4447. *teresa.bomhoff@ia.usda.gov.*

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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

Cheryl Ducharme, USDA Rural Development, 89 Main Street, 3rd Floor, Montpelier, VT 05602. 802–828–6083. *cheryl.ducharme@vt.usda.gov.*

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, NC 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

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720. (808) 933–8313. *Tim.Oconnell@hi.usda.gov.*

Republic of the Marshall Islands

Tim O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720. (808) 933–8313. *Tim.Oconnell@hi.usda.gov.*

Rhode Island

Charles W. Dubuc, USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002. (401) 826–0842 X 306. *Charles.Dubuc@ma.usda.gov.*

South Carolina

Shannon Legree, USDA Rural Development, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201. (803) 253–3150. *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

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

Joe Mueller, USDA Rural Development, 4440 NW. 25th Place, Gainesville, FL 32606. (352) 338–3482. *joe.mueller@fl.usda.gov.*

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 further information on this program, please contact the USDA Rural Development State Renewable Energy Coordinator for your respective State, as provided in the Addresses section of this Notice.

SUPPLEMENTARY INFORMATION:

Presidential Directive

On May 5, 2009, the President issued a Presidential Directive to Secretary of Agriculture Thomas R. Vilsack to aggressively accelerate the investment in and production of biofuels (published in the **Federal Register** on May 7, 2009 (74 FR 21531–21532)). Secretary Vilsack also announced that he will help lead an unprecedented interagency effort to increase America's energy independence and spur rural economic development.

The Presidential directive requests that Secretary Vilsack take steps to the extent permitted by law to expedite and increase production of and investment in biofuel development efforts by, among other things, making renewable energy financing opportunities from the 2008 Farm Bill available within 30 days, which includes guidance to biofuels producers to encourage production of next-generation biofuels from cellulosic biomass and other feedstocks

Administrative Procedure Act Statement

This Notice is being issued without advance rulemaking or public comment. The Administrative Procedure Act (''APA'', 5 U.S.C. 553), has several exemptions to rulemaking requirements. Among them is an exemption for matters relating to Federal benefits, but under the provisions of the ''Statement of Policy of the Secretary of Agriculture effective July 24, 1971,'' issued by

Secretary Hardin in 1971 (36 FR 13804 (the ''Hardin Memorandum'')), the Department will normally engage in rulemaking related to Federal benefits despite that exemption. However, the Hardin Memorandum does not waive certain other APA-contained exemptions, in particular the ''good cause'' exemption found at 5 U.S.C. 553(b)(3)(B), which allows effective government action without rulemaking procedures where withholding the action would be ''impracticable, unnecessary, or contrary to the public interest.'' The Hardin memorandum specifically provides for the use of the ''good cause'' exemption, albeit sparingly, when a substantial basis for so doing exists, and where, as will be described more fully below, that substantial basis is explained.

USDA has determined, consistent with the APA and the Hardin Memorandum, that making these funds available under this Notice for payments to producers of advanced biofuels as soon as possible is in the public interest. Withholding this Notice to provide for public notice and comment would unduly delay the provision of benefits associated with this program and be contrary to the public interest. Should the actual practice of the program produce reasons for program modifications those modifications can be brought to the attention of the Department and changes made in the future rulemaking process.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, RBS is requesting comments from all interested individuals and organizations on a new information collection for the Advanced Biofuels Producer Payment Program. While this Notice requests comments on the information collection activities required for the Advanced Biofuels Producer Payment Program, in order to meet the time frames mandated by the Presidential Memorandum discussed above, RBS submitted the following information collection request to the Office of Management and Budget (OMB) under the emergency procedure in accordance with the Paperwork Reduction Act of 1995. As discussed above in the APA section, there is good cause to forgo any delay associated with the opportunity for advance public comment. The Advanced Biofuels Producer Payment Program will provide payments for the production of advanced biofuels.

Copies of all forms, regulations, and instructions referenced in this NOFA may be obtained from RBS. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

Title: Advanced Biofuels Producer Payment Program.

OMB Control Number: New collection.

Type of Request: New.

Abstract: This information collection is needed to comply with section 9005 of Title IX of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101–8113), which was added by the Food, Conservation, and Energy Act of 2008.

Under this Notice, the Agency is providing payments to eligible producers of advanced biofuels to support and encourage the production of advanced biofuels. To meet the goals of this program, the Agency is requesting information from applicants including data regarding the production of advanced biofuels, feed stocks used, and the type quality of the advanced biofuels produced.

The collection of information is vital to the Agency to make wise decisions regarding the eligibility of Advanced Biofuels producers and their products in order to ensure compliance with the provisions of this Notice and to ensure that the payments are made to eligible producers of Advanced Biofuels. In summary, this collection of information is necessary in order to implement this program.

The following estimates are for the first year the program is in place.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Advanced Biofuels producers.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 6.9.

Estimated Number of Responses: 2,082.

Estimated Total Annual Burden (Hours) on Respondents: 1,856.

Copies of this information collection may be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

Comments

Comments are invited regarding: (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, USDA, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this Notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Overview Information

Federal Agency Name. Rural Business-Cooperative Service.

Contract Proposal Title. Advanced Biofuels Producer Payment Program.

Announcement Type. Initial announcement.

Contract Proposal Number. FR–XXX–C–CC; OMB approval number is 0570–XXXX.

Catalog of Federal Domestic Assistance (CFDA) Number. The CFDA number for this Notice is 10.078.

Dates. The Advanced Biofuels Program Sign-up Period for Fiscal Year 2009 is June 12, 2009 and August 11, 2009.

Availability of Notice. This Notice is available on the USDA Rural Development Web site at *http://www.rurdev.usda.gov/rbs/busp/9005Biofuels.htm.*

I. Funding Opportunity Description

A. *Purpose of the Program.* The purpose of this program is to support and ensure an expanding production of Advanced Biofuels by providing payments to Eligible Advanced Biofuel Producers. Implementing this program not only promotes the Agency's mission for promoting sustainable economic development in rural America, but is an important part of achieving the Administration's goals for increased biofuel production and use by providing economic incentives for the production of advanced biofuels.

B. *Statutory Authority.* This program 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.

Advanced biofuel. Fuel derived from Renewable Biomass, other than corn kernel starch, to include:

(i) Biofuel derived from cellulose, hemicellulose, or lignin;

(ii) Biofuel derived from sugar and starch (other than Ethanol derived from corn kernel starch);

(iii) Biofuel derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste;

(iv) Diesel-equivalent fuel derived from Renewable Biomass, including vegetable oil and animal fat;

(v) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from Renewable Biomass;

(vi) Butanol or other Alcohols produced through the conversion of organic matter from Renewable Biomass; and

(vi) Other fuel derived from cellulosic biomass.

Advanced biofuel producer. An individual or legal entity, including, but not limited to, a corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit entity that produces an Advanced Biofuel.

Agency. The Rural Business and Cooperative Service on behalf of the U.S. Department of Agriculture.

Alcohol. Anhydrous ethyl Alcohol manufactured in the United States and its territories and sold either:

(i) For fuel use, rendered unfit for beverage use, produced at a Biorefinery and in a manner approved by ATF for the production of Alcohol for fuel; or

(ii) As denatured Alcohol used by blenders and refiners and rendered unfit for beverage use.

Alcohol producer. An individual or legal entity, including, but not limited to, a corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit entity that is authorized by ATF to produce Alcohol.

ATF. The Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice.

Base production. The quantity of Eligible Advanced Biofuels produced at an Advanced Biofuel Biorefinery as determined by the Agency under paragraphs (1) through (3), as applicable. An Advanced Biofuel Biorefinery's Base Production cannot be transferred to another Advanced Biofuel Biorefinery.

(1) If the Biorefinery has been in existence for 12 months or more prior to June 12, 2009, the Biorefinery's Base Production for FY 2009 will be equal to the actual amount of Biofuel produced over that 12-month period.

(2) If the Biorefinery has been in existence less than 12 months prior to June 12, 2009, the Biorefinery's Base Production for FY 2009 will be equal to the amount of production the biorefinery could produce if operated at the nameplate capacity for a full year times the startup/shakedown factor as determined by the Agency.

(3) If the Advanced Biofuel Biorefinery will begin producing after June 12, 2009, the Biorefinery's Base Production for FY 2009 will be equal to the quantity projected to be produced by the Biorefinery's producer as reported in Form RD 9005–1.

Biodiesel. A mono alkyl ester, manufactured in the United States and its territories, that meets the requirements of the appropriate American Society for Testing and Materials Standard (ASTM).

Biofuel. Fuel derived from Renewable Biomass.

Biorefinery. A facility (including equipment and processes) that converts Renewable Biomass into Biofuels and biobased products and may produce electricity.

Certificate of Analysis. A document approved by the Agency that certifies the quality and purity of the Advanced Biofuel being produced. The document must be from a qualified, independent third party.

Contract. The Advanced Biofuels Program Contract, or other form prescribed by the Agency.

Eligible advanced biofuel producer. A producer of Advanced Biofuels that meets all requirements for program payments.

Eligible renewable biomass. Renewable Biomass excluding corn kernel starch.

Eligible renewable energy content. That portion of an Advanced Biofuel's energy content derived from eligible Renewable Biomass feedstock. The energy content from any portion of the Biofuel, whether from, for example, blending with another fuel or a denaturant, that is derived from a non-Eligible Renewable Biomass feedstock (*e.g.,* corn kernel starch) is not eligible for payment under this program.

Ethanol. Anhydrous ethyl Alcohol manufactured in the United States and its territories and sold either:

(i) For fuel use, and which has been rendered unfit for beverage use and produced at a biofinery approved by the ATF for the production of Ethanol for fuel, or

(ii) As denatured Ethanol used by blenders and energy refiners, which has been rendered unfit for beverage use.

Ethanol producer. An individual or legal entity, including but not limited to, a corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or non-profit entity that is authorized by ATF to produce ethanol.

Fiscal Year (FY). A 12-month period beginning each October 1 and ending September 30 of the following calendar year.

Incremental production. The quantity of Eligible Advanced Biofuel produced at an Advanced Biofuel Biorefinery that is in excess of that Biorefinery's Base Production, except that for Advanced Biofuel Biorefineries that begin producing Eligible Advanced Biofuels after June 12, 2009. For such Biorefineries, production in excess of Base Production, as determined under paragraph (3) under the definition of Base Production, will not be treated as Incremental Production.

Larger producer. Eligible producers with a refining capacity exceeding 150,000,000 gallons of Advanced Biofuel per year.

Payment application. Form RD 9005–3, ''Advanced Biofuel Payment Program—Payment Request,'' which is required in order to receive payments under this program.

Quarter. The Federal fiscal time period for any fiscal year as follows:

(i) 1st Quarter: October 1 through December 31;

(ii) 2nd Quarter: January 1 through March 31;

(iii) 3rd Quarter: April 1 through June 30; and

(iv) 4th Quarter: July 1 through September 30.

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.

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, and any area that has been determined to be ''rural in character'' by the Under Secretary for Rural Development, or as otherwise identified in this definition. In determining which census blocks in an urbanized area are not in a Rural Area, the Agency will exclude any cluster of census blocks that would otherwise be considered not in a Rural Area only because the cluster is adjacent to not more than two census blocks that are otherwise considered not in a Rural Area under this definition.

(i) 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.

(ii) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are ''not urban in character.'' Any such requests must be forwarded to the National Office, Business and Industry Division, with supporting documentation as to why the area is ''not urban in character'' for review, analysis, and decision by the Administrator, Business and Cooperative Programs.

(iii) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(iv) 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.

(v) The determination that an area is ''rural in character'' under this definition will be to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 population that is within one-quarter mile of a rural area.

Sign-up period. The time period announced by the Agency in this Notice during which the Agency will accept form RD 9005–1.

Smaller producer. Eligible producers with a refining capacity of 150,000,000 gallons or less of Advanced Biofuel per year.

State. Any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

USDA. The United States Department of Agriculture.

II. Funding Information

A. *Available Funds.* Congress appropriated mandatory funding to this program as follows: $30 million for FY 2009.

B. *Number of Payments.* Under this notice, payments to participating Advanced Biofuel Producers will be made in one payment following the end of FY 2009. The number of payments made will depend on the number of eligible participating Advanced Biofuel Producers.

C. *Range of Amounts of Each Payment.* The amount of each payment will depend on the number of Eligible Advanced Biofuel Producers participating in the program, the amount of Advanced Biofuels being produced by such Advanced Biofuel Producers, and the amount of funds available.

D. *Contract period.* October 1, 2008 through September 30, 2009.

E. *Type of Instrument.* Payment.

III. Eligibility Information

This Notice contains eligibility requirements for Advanced Biofuel Producers seeking payments under this program.

A. Applicant Eligibility

To be eligible for this program, the applicant must be an Eligible Advanced Biofuel Producer, which is defined in this Notice as a producer of Advanced Biofuels who meets all requirements for program payments, and must meet the citizenship requirement specified in paragraph (1) or (2), as applicable, of this section.

(1) If the applicant is an individual, the applicant must be a citizen or national 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 must reside in the U.S. after legal admittance for permanent residence.

(2) If the applicant is an entity other than an individual, the applicant must be at least 51 percent owned by persons who are either citizens or nationals 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 legally admitted permanent residents residing in the U.S.

(3) The Agency will determine an applicant's eligibility for participation in this program.

(4) If an applicant's original submittal is not sufficient to verify an applicant's eligibility, the Agency will notify the Advanced Biofuel Producer, in writing, as soon as practicable. This notification will identify, at a minimum, the additional information being requested to enable the Agency to determine the applicant's eligibility and a timeframe in which to supply the information.

(5) An otherwise Eligible Advanced Biofuel Producer will be determined to be ineligible if the Advanced Biofuel Producer:

(i) Refuses to allow the Agency to verify any information provided by the Advanced Biofuel Producer under this program, including information for determining applicant eligibility, Advanced Biofuel eligibility, and application payments; or

(ii) Fails to meet any of the conditions set out in this Notice, in the Contract, or in other program documents; or

(iii) Fails to comply with all applicable Federal, State, or local laws.

B. Rural Area Requirement

To be eligible for program payments, an otherwise Eligible Advanced Biofuel must be produced at an Advanced

Biofuel Biorefinery located in a Rural Area.

C. Payment Eligibility

To be eligible for program payments, an Advanced Biofuel Producer must maintain adequate records for FY 2009, quantifying:

(1) Feedstock usage and Advanced Biofuel production for each Advanced Biofuel Biorefinery, and

(2) All other records required to establish program eligibility and compliance.

IV. Application and Submission Information

A. Address To Request Applications

Contract and Payment Application forms are available from the USDA, Rural Development State Office, Renewable Energy Coordinator. The list of Renewable Energy Coordinators is provided in the **ADDRESSES** section of this Notice.

B. Content and Form of Submission

Applicants must submit an original, signed hard copy of the Form RD 9005–1, ''Advanced Biofuel Payment Program Annual Application,'' required in this section to the Rural Development State Renewable Energy Coordinators in the State in which the Advanced Biofuel Producer's principal office is located. A list of the Rural Development State Renewable Energy Coordinators is provided in the **ADDRESSES** section of this Notice. Applicants must submit to the Agency the following:

(1) *Form RD 9005–1, ''Advanced Biofuel Payment Program Annual Application.''* This form requires an Advanced Biofuel Producer seeking to participate in this program to provide information on the Advanced Biofuel Producer; the Advanced Biofuel Producer's Biorefineries at which the Advanced Biofuels are produced, including location and quantities produced; and the types and quantities of Renewable Biomass feedstock being used to produce the Advanced Biofuels. The form also requires the Advanced Biofuel Producer to certify the information provided, including that the Advanced Biofuels are Eligible Advanced Biofuels and that the Renewable Biomass feedstock used to produce the Advanced Biofuels are eligible biomass feedstock.

(i) Producers must submit authoritative evidence (as specified in paragraph B(2) below) documenting production of Advanced Biofuels, and the eligibility of the Advanced Biofuels, between October 1, 2007, and September 30, 2008. Advanced Biofuel production must be certified as stated elsewhere in this notice in order to be eligible for payment, including determining Base and Incremental Production amounts.

(ii) Applicants may submit this form for an Advanced Biofuel Biorefinery that is scheduled to begin producing Eligible Advanced Biofuels after the application period for FY 2009 closes and before the end of FY 2009.

(iii) Please note that applicants are required to have a Dun and Bradstreet Universal Numbering System (DUNS) number (unless the applicant is an individual). The DUNS number is a nine-digit identification number, which uniquely identifies business entities. A DUNS number 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.*

(2) *Certifications.* The Advanced Biofuel Producer must furnish the Agency all required certifications identified in paragraphs (B)(2)(i) and (ii), as applicable, before acceptance into the program, and furnish access to the Advanced Biofuel Producer's records required by the Agency to verify compliance with program provisions. The required certifications depend on the type of Biofuel produced. Certifications are to be completed and provided by an accredited independent, third-party.

(i) *Alcohol.* For Alcohol Producers with authority from ATF to produce Alcohol, copies of either

(A) The Alcohol Fuel Producers Permit (ATF F 5110.74) or

(B) The registration of Distilled Spirits Plant (ATF F 5110.41) and Operating Permit (ATF F 5110.23).

(ii) *Hydrous ethanol.* If the Advanced Biofuel Producer entering into this agreement is:

(A) The hydrous Ethanol Producer, then the Advanced Biofuel Producer shall include with the Contract an affidavit, acceptable to the Agency, from the distiller stating that the:

(*1*) Applicable hydrous Ethanol produced is distilled and denatured for fuel use according to ATF requirements, and

(*2*) Distiller will not include the applicable Ethanol in any payment requests that the distiller may make under this program.

(B) The distiller that upgrades hydrous Ethanol to anhydrous ethyl Alcohol, then the Advanced Biofuel Producer shall include with the Contract an affidavit, acceptable to the Agency, from the hydrous Ethanol Producer stating that the hydrous Ethanol Producer will not include the applicable Ethanol in any payment requests that may be made under this program.

Note: The Agency may pay the first applicant to the exclusion of other possible applicants. Or, the Agency may require an agreement as to payment before paying either. Alternatively, the Agency may designate whether the distiller or the hydrous Ethanol Producer will be the payee where needed to ensure program integrity.

(C) *Biodiesel, biomass-based diesel, and liquid hydrocarbons derived from biomass.* For these fuels, the Advanced Biofuel Producer shall self-certify that the producer, the Advanced Biofuel Biorefinery, and the Biofuel meet the definition, registration requirements as applicable under Energy Independence and Security Act, Clean Air Act, Environmental Protection Agency, Internal Revenue Service, and quality requirements per applicable ASTM International standards and commercially acceptable quality standards of the local market.

(D) *Gaseous Advanced Biofuel.* For gaseous Advanced Biofuel Producers, certification that the Biofuel meets commercially acceptable pipeline quality standards of the local market.

(3) RD Instruction 1940–Q, Exhibit A–1, ''Restriction on Lobbying (if over $100,000)''.

(4) SF–LLL, ''Disclosure of Lobbying Activities''.

(5) RD 400–4, ''Assurance Agreement''.

C. Submission Dates and Times

(1) *Enrollment.* Advanced Biofuel Producers who expect to have eligible production at any time during FY 2009 must enroll in the program between June 12, 2009 and August 11, 2009.

(2) *Payment applications.* Advanced Biofuel Producers must submit Form RD 9005–3 by 4:30 p.m. local time November 2, 2009. Payment will be made for the time period October 1, 2008 through September 30, 2009.

D. Intergovernmental Review

This program is not subject to Executive Order 12372—Intergovernmental Review of Federal Programs because the Government is not providing financial assistance for the development of advanced biofuel biorefineries.

E. Funding Restrictions

For a FY, not more than five percent of the funds shall be made available to eligible producers with a refining capacity exceeding 150,000,000 gallons of Advanced Biofuel per year. In calculating whether a producer meets the 150,000,000 capacity, production of all Advanced Biofuel Biorefineries

owned or operated by the producer will be totaled.

V. Program Payment Provisions

This section of the Notice identifies the process and procedures the Agency will use to make payments to Eligible Advanced Biofuel Producers.

As noted previously in this Notice, Form RD 9005–1, ''Advanced Biofuel Payment Program Annual Application,'' will be used by Advanced Biofuels producers to apply for participation in this program. When a producer submits Form RD 9005–1, the Agency will make its determination as to whether or not the producer is eligible to participate. If an Advanced Biofuel Producer is determined to be ineligible, the Agency will notify the producer, in writing, of its determination.

If an Advanced Biofuel Producer is determined eligible to receive payments, the Eligible Advanced Biofuel Producer must then enter into a Contract with the Agency using Form RD 9005–2, ''Advanced Biofuel Payment Program Contract,'' in order to participate in this program. The Agency will forward Form RD 9005–2 to the Advanced Biofuel Producer. The Advanced Biofuel Producer must agree to the terms and conditions of the Contract, sign, date, and return it to the Agency within the time provided by the Agency. Each contract issued under this notice will be for FY 2009.

Once the Eligible Advanced Biofuel Producer has entered into a valid Contract with the Agency, the Advanced Biofuel Producer will be required to submit Form RD 9005–3, ''Advanced Biofuel Payment Program—Payment Request,'' in order to receive payments under this program. This form requires the Advanced Biofuel Producer to provide information on the types and quantities of Advanced Biofuels produced in a Quarter and on the types and quantities of renewable feedstock used to produce those Advanced Biofuels. In addition, the Advanced Biofuel Producer will report cumulative production of Advanced Biofuels and the use of Renewable Biomass feedstock for all Advanced Biofuel Biorefineries. The information for each Advanced Biofuel Biorefinery is to be provided cumulatively and on an individual Advanced Biofuel Biorefinery basis.

(a) *Payment applications.* To request payments under this program, an Eligible Advanced Biofuel Producer must:

(1) Submit Form RD 9005–3, ''Advanced Biofuel Program Payment Application,'' to cover all of FY 2009;

(2) Certify that the request is accurate;

(3) Furnish the Agency such certification, and access to such records, as the Agency considers necessary to verify compliance with program provisions; and

(4) Provide documentation as requested by the Agency regarding the net production of Advanced Biofuel at all Advanced Biofuel Biorefineries during FY 2009.

(b) *Additional documentation.* After a Payment Application is submitted, Eligible Advanced Biofuel Producers may be required to submit additional clarification if their original submittal is not sufficient to verify eligibility for payment or quantity of the Advanced Biofuel product.

(c) *Notification.* The Agency will notify the Advanced Biofuel Producer, in writing, whenever the Agency determines that a Payment Application is ineligible and why the application was determined ineligible.

(d) *Payment provisions.* Determination of payments to Eligible Advanced Biofuel Producers will be made in accordance with the provisions of this paragraph. As stated previously, making these payments promotes the Agency's mission for promoting sustainable economic development in rural America and is an important part of achieving the Administration's goals for increased biofuel production and use by providing economic incentives for the production of advanced biofuels.

(1) *Determination of payment rate.* The Agency will establish payment rates for both Base and Incremental Production of Eligible Advanced Biofuels for both Smaller Producers and Larger Producers using the procedures specified in paragraphs (d)(1)(i) through (v). These rates will be applied to the actual quantity of Eligible Advanced Biofuel produced when making payments to Eligible Advanced Biofuel Producers, as described below.

(i) Based on the information provided in each eligible Form RD 9005–1, the Agency will determine Base and Incremental Eligible Advanced Biofuel Production being projected for the FY for both Smaller Producers and Larger Producers. Thus, the Agency will determine the Base Production quantity for Smaller Producers, the Incremental Production quantity for Smaller Producers, the Base Production quantity for Larger Producers, and the Incremental Production quantity for Larger Producers.

(ii) If an applicant is blending its Advanced Biofuel using ineligible feedstocks (*e.g.,* fossil gasoline or methanol, corn kernel starch), only the quantity of Advanced Biofuel being produced from eligible feedstocks will be used in determining the payment rates and for which payments will be made.

(iii) For each combination of production type (base, incremental) and producer size (smaller, larger—over 150 million equivalent gallons of production), the Agency will convert the projected Base and Incremental Production determined to be eligible under paragraph (d)(1)(i) into British Thermal Unit (BTU) equivalent using factors published by the Energy Information Administration (or successor organization). If the Energy Information Administration (or successor organization) does not publish such conversion factor for a specific type of Advanced Biofuel, the Agency will establish and use a conversion formula as appropriate until such time as the Energy Information Administration (or successor organization) publishes a conversion factor for said Advanced Biofuel. The Agency will then calculate the total eligible BTUs across all eligible applications.

(iv) The Agency will determine the amount of program funds available to Smaller Producers and to Larger Producers in the FY.

(v) The Agency will then determine the Base Production and Incremental Production payment rates ($/Btu) for Smaller Producers and for Larger Producers. For both Smaller Producers and Larger Producers, the Incremental Production payment rate will be 3 times higher than their respective Base Production payment rate. These rates will be calculated such that all of the funds allocated will be distributed in the FY.

(2) *Contract Value.* Using the payment rates established under paragraph (d)(1) and the projected Base and Incremental Production for each Advanced Biofuel Biorefinery, the Agency will calculate a value for each Eligible Advanced Biofuel Producer's Contract for FY 2009 using Equation 4:

$$CV_{2009} = (BPPR \times BP) + (IPPR \times IP) \qquad \text{(Eq. 4)}$$

Where:

CV_{2009} = Contract value for FY 2009
BPPR = Base Production payment rate, $/BTU
BP = projected eligible Base Production, BTUs
IPPR = Incremental Production payment rate, $/BTU
IP = projected eligible Incremental Production, BTUs

(3) *Payment Amount.* Each eligible Advanced Biofuel Producer will be paid for the actual amount of BTUs produced from Eligible Advanced Biofuels produced in FY 2009. The Agency will not pay a producer more than the Contract value established under paragraph (d)(2).

(4) *Remaining funds.* If available funds remain at the end of FY 2009 (*e.g.,* due to underproduction of Eligible Advanced Biofuels), the Agency will carry the funds over to FY 2010.

(5) *Other payment provisions.* The following provisions apply.

(i) Advanced Biofuel Producers will be paid on the basis of the amount of Eligible Renewable Energy Content of the Advanced Biofuels only if the producer provides documentation sufficient, including a Certificate of Analysis, for the Agency to determine the Eligible Renewable Energy Content for which payment is being requested, and quantity produced through such documentation as, but not limited to, records of sale and calibrated flow meter records.

(ii) There shall only be one Eligible Advanced Biofuel Producer per Advanced Biofuel Biorefinery. If needed, the Agency may treat Advanced Biofuel Producers with common interests, common ownership, or common Advanced Biofuel Biorefineries or arrangements as the same Advanced Biofuel Producer.

(iii) Hydrous Ethanol that is upgraded by another distiller to anhydrous ethyl Alcohol is eligible for payment only once; that is, the Agency will make payment either to the Advanced Biofuel Producer of the hydrous ethanol or to the Advanced Biofuel Producer who distills the hydrous Ethanol to anhydrous ethyl Alcohol.

(iv) Subject to other provisions of this section, Advanced Biofuel Producers shall be paid any sum due for the payment period, subject to the requirements and refund provisions of this Notice.

(e) *Payment Adjustments.* The Agency will adjust the payment otherwise payable to an Advanced Biofuel Producer if there is a difference between the amount actually produced and the amount determined by the Agency to be eligible for payment.

(f) *Payment liability.* Any payment, or portion thereof, made under this program shall be made without regard to questions of title under State law and without regard to any claim or lien against the Advanced Biofuel, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government.

(g) *Verification.* The Agency reserves the right to verify all payment requests and subsequent payments made under this program, as frequently as necessary to ensure the integrity of the program. The Agency will conduct site visits to review producer records in order to verify information submitted in Forms RD 9005–1 and RD 9005–3.

(1) *Self-certification by the producer.* The Agency will review producer records that the type and amount of biofuel produced and the type and amount of feedstocks used.

(2) *Blending verification.* The Agency will review the producer's certificates of analysis and feedstock records to verify the portion of the advanced biofuel eligible for payment.

(3) *Certificate of Analysis.* The Agency will review the producer records to ensure that each certificate of analysis has been issued by a qualified, independent third party.

(h) *Refunds and interest payments.* An Eligible Advanced Biofuel Producer who receives payments under this program may be required to refund such payments as specified in this paragraph. If the Agency suspects fraudulent representation through its site visits and records inspections under paragraph (g) of this section, it will be referred to the Office of Inspector General for appropriate action.

(1) An Eligible Advanced Biofuel Producer receiving payments under this program shall become ineligible if the Agency determines the Advanced Biofuel Producer has:

(i) Made any fraudulent representation; or

(ii) Misrepresented any material fact affecting a program determination.

(2) All payments made to an entity determined by the Agency to be ineligible shall be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs as determined appropriate under 7 CFR 901.9.

(3) When a refund is due, it shall be paid promptly. If a refund is not made promptly, the Agency may use all remedies available to it, including Treasury offset under the Debt Collection Improvement Act of 1996, financial judgment against the producer, and sharing information with the Department of Justice.

(4) Late payment interest shall be assessed on each refund in accordance with the provisions and rates established by the United States Treasury.

(i) Interest charged by the Agency under this Notice shall be established by the United States Treasury. Such interest shall accrue from the date such payments were made to the date of repayment.

(ii) The Agency may waive the accrual of interest or damages if the Agency determines that the cause of the erroneous determination was not due to any action of the Advanced Biofuel Producer.

(5) Any Advanced Biofuel Producer or person engaged in an act prohibited by this section and any Advanced Biofuel Producer or person receiving payment under this Notice shall be jointly and severally liable for any refund due under this Notice and for related charges.

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, and will assign the applicant a Contract number. 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 appeal rights as specified in this Notice.

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 of this title.

(2) *Remedies.* The remedies provided in this Notice to the Agency shall be in addition to other civil, criminal, or administrative remedies that may apply.

(3) *Records.* For the purpose of verifying compliance with the requirements of this Notice, each Eligible Advanced Biofuel Producer shall make available at one place at all reasonable times for examination by representatives of USDA, all books, papers, records, Contracts, scale tickets, settlement sheets, invoices, written price quotations, and other documents related to the program that is within the control of such Advanced Biofuel

Producer for not less than three years from each payment date.

(4) *Succession and control of biorefineries and production.* An entity who becomes the Eligible Advanced Biofuel Producer for a Biorefinery that is under Contract under this Notice must request permission from the Agency to succeed to the program Contract and the Agency may grant such request if it is determined that the entity is an eligible producer and permitting such succession would serve the purposes of the program. If appropriate, the Agency may require the consent of the previous Eligible Advanced Biofuel Producer to such succession.

Payments will be made only to an eligible Advanced Biofuel Producer with a valid Contract and for Biorefineries owned or controlled by said Producer. If payments are made to an Advanced Biofuel Producer for production at a Biorefinery no longer owned or controlled by said Producer or to an otherwise ineligible Advanced Biofuel Producer, the Agency will demand full refund of all such payments.

C. Environmental Review

All recipients under this Notice are subject to the requirements of subpart G of part 1940 of title 7 of the CFR. However, 7 CFR 1940.310(e) excludes this activity. In accordance with § 1940.310(e), General Exclusions, if a program provides assistance that is not related to the development of a specific site, it is excluded from conducting an environmental review.

VII. Agency Contacts

Assistance. For assistance on this payment program, please contact a USDA Rural Development State Renewable 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 programs. (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.

Dated: June 8, 2009.

Judith A. Canales,

Administrator, Rural Development, Business and Cooperative Programs.

[FR Doc. E9–13816 Filed 6–11–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest, Mystic Ranger District, SD, Mystic Range Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to evaluate grazing on eight (8) allotments on the Black Hills National Forest, Mystic Ranger District comprising approximately 85,055 acres within the constraints of the Black Hills National Forest Land and Resource Management Plan, as amended.

DATES: Comments concerning the scope of analysis must be received by July 13, 2009. The draft environmental impact statement is expected September 2009 and the final environmental impact statement is expected December 2009.

ADDRESSES: Send written comments to Robert J. Thompson, District Ranger, Black Hills National Forest, Mystic Ranger District, Mystic Range Project, 8221 South Highway 16, Rapid City, South Dakota 57702. Comments may also be sent via e-mail to *comments-rocky-mountain-black-hills-mystic@fs.fed.us,* or via facsimile to (605) 343–7134. Please list ''Mystic Range'' as the subject on comments sent via e-mail or facsimile. Electronic comments must be readable in Word, Rich Text, or PDF formats.

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative review or judicial review.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to participate in subsequent administrative review or judicial review.

FOR FURTHER INFORMATION CONTACT: If you have any questions or need additional information, please contact Mark Vedder, Range Specialist; Katie Van Alstyne, Team Leader; or Robert J. Thompson, District Ranger, at the Mystic Ranger District office in Rapid City at (605) 343–1567.

Individiuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

Purpose and Need for Action

The purpose of this project is to authorize livestock grazing on all or part of the project area and to ensure that livestock grazing occurs in an enviromentally acceptable manner. The EIS will determine current conditions, analyze environmental consequences of grazing mangement actions on those conditions, and assist the decisionmaker in selecting mangement/monitoring strategies consistent with meeting desired conditions in the Forest Plan.

The underlying needs for this proposal include:

- Improve livestock management so that it is consistent with the goals, objectives, standards, and guidelines of the Forest Plan, as amended.
- Improve species composition of upland vegetation.
- Improve streambank stability.
- Improve riparian vegetation diversity and abundance.
- Reduce opportunities for cattle conflicts with vehicle traffic.

SUPPLEMENTARY INFORMATION:

Proposed Action

The Proposed Action is designed to maintain or improve resource conditions in rangeland health, vegetation, watershed conditions, designated Botanical Areas, and wildlife habitat relative to livestock grazing. Some grazing practices would be changed to resolve grazing related issues. Proposed range improvements include water developments, fencing (for highway, pasture/allotment boundary, and/or riparian exclosure purposes), cattleguards, corrals, stream

restoration structures, and construct, bury new and/or existing pipeline. It provides for a range of alternate actions that may be selected from to achieve desired conditions in an acceptable timeframe. This approach is known as ''Adaptive Management.'' Some grazing practices would be changed to resolve grazing related resource issues.

Successful Adaptive Management requires timely monitoring of resource conditions and trends. The Proposed Action also includes a monitoring plan for each allotment designed to focus on specific areas with livestock related resource problems. If monitoring results indicate that resource problems persist, adaptive management options are identified that would be implemented in cooperation with each permittee to effect improvement in resource conditions.

Possible Alternatives

The Current Management Alternative would not change existing permitted livestock grazing. The No Grazing Alternative would eliminate any livestock grazing on the project area.

Responsible Official

Robert J. Thompson, District Ranger, Mystic Ranger District, Black Hills National Forest, 8221 South Highway 16, Rapid City, SD 57702.

Nature of Decision To Be Made

The decision to be made is whether to continue to permit livestock grazing on all, part, or none of these allotments and, if so, under what terms and conditions to ensure that desired condition objectives are met, or that movement occurs toward those objectives.

Preliminary Issues

Anticipated issues include: Support and opposition to livestock grazing; impacts of livestock grazing on wildlife habitat, riparian areas, and streambank stability.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. Comments and input regarding the proposal will be received via direct mailing from the public, other groups, and agencies during the initial public comment period in June of 2009. Comments submitted based on this NOI will be most useful if received within 30 days from the date of this notice. Response to the Draft EIS will be sought from the interested public beginning in August 2009.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent administrative appeal or judicial review.

Dated: June 4, 2009.

Craig Bobzien,

Forest Supervisor, Black Hills National Forest.

[FR Doc. E9–13690 Filed 6–11–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2008–0121]

Notice of Availability of an Evaluation of the Highly Pathogenic Avian Influenza Subtype H5N1 Status of Saxony, Germany

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared an evaluation of the animal health status of Saxony, Germany, relative to the H5N1 subtype of highly pathogenic avian influenza (HPAI). The evaluation presents our assessment of the HPAI H5N1 detection, control, and eradication measures in place in Saxony, Germany, during an outbreak of HPAI in 2008, as well as our assessment of the present status of Saxony, Germany, with respect to HPAI subtype H5N1. We are making this evaluation available to the public for review and comment. If, after the close of the comment period, APHIS can identify no additional risk factors that would indicate that domestic poultry in Saxony, Germany, continue to be affected with HPAI H5N1, we would conclude that the importation of live birds, poultry carcasses, parts of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from the affected region of Saxony, Germany, presents a low risk of introducing HPAI H5N1 into the United States.

DATES: We will consider all comments that we receive on or before July 13, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0121* to submit or view comments and to view supporting and related materials available electronically.
- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS–2008–0121, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2008–0121.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Julia Punderson, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) has the authority to prohibit or restrict the importation into the United States of animals, animal products, and other articles in order to prevent the introduction of diseases and pests into the U.S. livestock and poultry populations.

Highly pathogenic avian influenza (HPAI) is a zoonotic disease of poultry. The H5N1 subtype of HPAI is an extremely infectious and fatal form of the disease. HPAI can strike poultry quickly without any warning signs of infection and, once established, can spread rapidly from flock to flock. HPAI viruses can also be spread by manure, equipment, vehicles, egg flats, crates, and people whose clothing or shoes

have come in contact with the virus. HPAI viruses can remain viable at moderate temperatures for long periods in the environment and can survive indefinitely in frozen material. The H5N1 subtype of HPAI has been of particular concern because it has crossed the species barrier and caused disease in humans.

On October 9, 2008, the German Federal Ministry of Consumer Protection, Food and Agriculture (BMVEL) reported an outbreak of HPAI H5N1 in a single mixed-species flock in Marfersdorf, located in the district of Görlitz in the Federal State of Saxony following the identification of HPAI H5N1 in a wild bird on a nearby lake.

The restrictions put in place by the European Commission on October 9, 2008, in response to that limited outbreak were lifted on November 13, 2008, following extensive surveillance and epidemiologic investigations. In a document titled, ''APHIS' Evaluation of the Status of High Pathogenicity Avian Influenza H5N1 (HPAI H5N1) in Saxony, Germany'' (February 2009), we present the results of our evaluation of the status of HPAI H5N1 in domestic poultry in Saxony, Germany, in light of the actions taken by German authorities since the 2008 outbreak, and document our analysis of the risk associated with allowing the importation of birds, poultry, and poultry products from the region of Saxony, Germany, into the United States in the aftermath of the 2008 outbreak.

Based on the evaluation, we have determined that the BMVEL was able to effectively control and eradicate HPAI H5N1 in their domestic poultry populations and that the German authorities have adequate control measures in place to rapidly identify, control, and eradicate the disease should it be reintroduced into the country in either wild birds or domestic poultry.

We are making the evaluation available for public review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice. The evaluation may be viewed on the *Regulations.gov* Web site or in our reading room (see **ADDRESSES** above for a link to *Regulations.gov* and information on the location and hours of the reading room). You may request paper copies of the evaluation by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the evaluation when requesting copies.

If, after the close of the comment period, APHIS can identify no additional risk factors that would indicate that domestic poultry in Saxony, Germany, continues to be affected with HPAI H5N1, we would conclude that the importation of live birds, poultry carcasses, parts of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds from Saxony, Germany, presents a low risk of introducing HPAI H5N1 into the United States.

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

Done in Washington, DC, this 8th day of June 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–13840 Filed 6–11–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funding Availability (NOFA) for Repowering Assistance Payments to Eligible Biorefineries

AGENCY: Rural Development-Energy Division, Program Branch, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the intention of the USDA (''the Agency'') to make payments to eligible biorefineries to encourage the use of renewable biomass as a replacement fuel source for fossil fuels used to provide process heat or power in the operation of these eligible biorefineries. This program is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

DATES: Applications for participating in this program must be received between July 1, 2009 and November 1, 2009.

The comment period for information collection under the Paperwork Reduction Act of 1995 continues through August 11, 2009. Comments on the paperwork burden must be received by this date to be assured of consideration.

ADDRESSES: Application materials may be obtained by contacting USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225.

FOR FURTHER INFORMATION CONTACT: For further information on this payment program, please contact USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225. Telephone: 202–720–1400.

SUPPLEMENTARY INFORMATION:

On May 5, 2009, the President issued a Presidential Directive to Secretary of Agriculture Thomas R. Vilsack to aggressively accelerate the investment in and production of biofuels (published in the **Federal Register** on May 7, 2009 (74 FR 21531–21532)). Secretary Vilsack also announced that he will help lead an unprecedented interagency effort to increase America's energy independence and spur rural economic development.

The Presidential directive requests that Secretary Vilsack take steps to the extent permitted by law to expedite and increase production of and investment in biofuel development efforts by, among other things, making renewable energy financing opportunities from the 2008 Farm Bill available within 30 days, which includes guidance and support to encourage biorefinereies to replace the use of fossil fuels in plant operations by installing new biomass energy systems or producing new energy from renewable biomass.

Administrative Procedure Act Statement

This NOFA is being issued without advance rulemaking or public comment. The Administrative Procedure Act (''APA'', 5 U.S.C. 553), has several exemptions to rulemaking requirements. Among them is an exemption for matters relating to federal benefits, but under the provisions of the ''Statement of Policy of the Secretary of Agriculture effective July 24, 1971,'' issued by Secretary Hardin in 1971 (36 FR 13804 (the ''Hardin Memorandum''), the Department will normally engage in rulemaking related to federal benefits despite that exemption. However, the Hardin Memorandum does not waive certain other APA-contained exemptions, in particular the ''good cause'' exemption found at 5 U.S.C. 553(b)(3)(B), which allows effective government action without rulemaking procedures where withholding the action would be ''impracticable, unnecessary, or contrary to the public interest.'' The Hardin memorandum specifically provides for the use of the ''good cause'' exemption, albeit sparingly, when a substantial basis for so doing exists, and where, as will be described more fully below, that substantial basis is explained.

USDA has determined, consistent with the APA and the Hardin

Memorandum, that making these funds available under this Notice for payments to biorefineries to assist in their conversion to the use of renewable energy sources as soon as possible is in the public interest. Withholding this NOFA to provide for public notice and comment would unduly delay the provision of benefits associated with this program and be contrary to the public interest. Should the actual practice of the program produce reasons for program modifications those modifications can be brought to the attention of the Department and changes made in the future rulemaking process.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, RBS is requesting comments from all interested individuals and organizations on a new information collection for the repowering assistance program. While this notice requests comments on the information collection activities required for the repowering assistance program, in order to meet the time frames mandated by the Presidential Memorandum discussed above, RBS submitted the following information collection request to the Office of Management and Budget (OMB) under the emergency procedure in accordance with the Paperwork Reduction Act of 1995. As discussed above in the APA section, there is good cause to forgo any delay associated with the opportunity for advance public comment. The repowering assistance program will provide payments for the conversion of biorefineries to use renewable energy as a power source.

Copies of all forms, regulations, and instructions referenced in this NOFA may be obtained from RBS. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in program benefits being withheld or denied.

Title: Repowering Assistance Program.

OMB Control Number: New collection.

Type of Request: New.

Abstract: This information collection is needed to comply with section 9004 of Title IX of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 8101–8113), which was added by the Food, Conservation, and Energy Act of 2008.

Under this Notice, the Agency is providing payments to eligible biorefineries to support and encourage the use of renewable biomass to replace fossil fuels in the production of heat or power that fuel the energy requirements of these biorefineries. To meet the goals of this program, the Agency is requesting information from applicants including project costs, cost-effectiveness, the percentage of reduction in fossil fuel use that a biorefinery anticipates by transitioning to biofuel and evidence of applicant's qualifications.

The collection of information is vital to the Agency to make decisions regarding the eligibility of biorefineries to participate in this program, in order to ensure compliance with the provisions of this Notice and to ensure that the payments are made to eligible biorefineries. In summary, the collection of information is necessary in order to implement this program.

The following estimates are based on the average over the first three years the program is in place:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 14.9 hours per response.

Respondents: Liquid transportation biofuel producers.

Estimated Number of Respondents: 18.

Estimated Number of Responses per Respondent: 7.5.

Estimated Number of Responses: 135.

Estimated Total Annual Burden (hours) on Respondents: 2,017

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, at (202) 692–0043.

Comments

Comments are invited regarding: (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, USDA, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250–0742. All responses to this Notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Overview Information

Federal Agency Name. Rural Business-Cooperative Service.

Payment Proposal Title. Repowering Assistance Program.

Announcement Type. Initial announcement.

Contract Proposal Number. XX–XXX–X–XX; OMB approval number is XXXX–XXXX.

Catalog of Federal Domestic Assistance (CFDA) Number. The CFDA number for this Notice is 10.866.

Dates. The Repowering Assistance Program application period for fiscal year 2009 is July 1 through November 1, 2009.

Availability of Notice. This Notice is available on the USDA Rural Development Web site at *http://www.rurdev.usda.gov/rbs/xxxxxxxxxxxxxxx.*

I. Funding Opportunity Description

A. *Purpose of the Program.* The purpose of this program is to provide financial incentives to biorefineries in existence on June 18, 2008, the date of the enactment of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill) (Pub. L. 110–246), to replace the use of fossil fuels used to produce heat or power at their facilities by installing new systems that use renewable biomass, or to produce new energy from renewable biomass.

The Agency may make payments under this program to any biorefinery that meets the requirements of this Notice for a period of up to three years. The Agency will determine the amount of payments to be made to a biorefinery based on the quantity of fossil fuel a renewable biomass system is replacing, the percentage reduction in fossil fuel used by the biorefinery, and the cost-effectiveness of the renewable biomass system, economic benefit to the community, and the potential to improve the quality of life in rural America.

The Agency will determine who receives payment under this program based on the percentage reduction in fossil fuel used by the biorefinery that will result from the installation of the renewable biomass system; the cost and cost-effectiveness of the renewable biomass system; and other selection criteria identified in Section V, Application Review Information. The above criteria will be used to determine priority for awards of $5 million or 50 percent of total eligible project costs, whichever is less. Based on our research

and survey of medium sized project costs, the Agency has determined that the dollar amount identified will provide adequate incentive for biorefineries to apply.

B. *Statutory Authority.* This program is authorized under Title IX, Section 9001, of the Food, Conservation, and Energy Act of 2008 (Pub. L. 110–246).

C. *Definition of Terms.* The following definitions are applicable to this Notice.

Application period. The time period announced by the Agency in this or subsequent Notices during which the Agency will accept applications.

Base energy use. The amount of documented fossil fuel energy use over an extended operating period.

(i) The extended operating period must be at least 24 months of recorded usage, and requires metered utility records for electric energy, natural gas consumption, fuel oil, coal shipments and propane use, as applicable for providing heat or power for the operation of the biorefinery.

(ii) Utility billing, oil and coal shipments must be actual bills, with meter readings, applicable rates and tariffs, costs and usage. Billing must be complete, without gaps and arranged in chronological order. Drop shipments of coal or oil can be substituted for metered readings, provided the biorefinery documents the usage and its relationship to providing heat or power to the biorefinery.

(iii) A biorefinery in existence on or before June 18, 2008 with less than 24 months of actual operating data must provide at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

Biobased products. Is a product determined by the Secretary to be a commercial or industrial product (other than food or feed) that is: (a) Composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials; or (b) an intermediate ingredient or feedstock.

Biofuel. Fuel derived from renewable biomass.

Biorefinery. A facility (including equipment and processes) that converts renewable biomass into biofuels and biobased products, and may produce electricity.

Eligible biorefinery. A producer, whose primary production is liquid transportation biofuels, that meets all requirements of this program. The biorefinery must have been in existence on or before June 18, 2008.

Eligible renewable biomass. Renewable biomass as defined in this Notice.

Energy Information Agency (EIA). The statistical agency of the Department of Energy and source of official energy statistics from the U.S. Government.

Feasibility study. An Agency-acceptable analysis of the economic, environmental, technical, financial, and management capabilities of a proposed project or business in terms of its expected success. See Section III G(9) of this notice for a list of items included in a feasibility study.

Feedstock unit. Bushel, hundredweight, pound, or other unit of measure, as applicable, for the renewable biomass feedstock used in liquid transportation biofuel production.

Financial Interest. For the purposes of this notice means any ownership, creditor, or management interest in the biorefinery.

Fiscal year. The 12-month period beginning each October 1 and ending September 30 of the following calendar year.

Fossil fuel. Fuels derived from coal, oil and natural gas.

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; and

(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 as per paragraphs (e)(2), (e)(3), and (e)(4), and large tree retention as per 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.

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, and any area that has been determined to be ''rural in character'' by the Under Secretary for Rural Development, or as otherwise identified in this definition. In determining which census blocks in an urbanized area are not in a rural area, the Agency will exclude any cluster of census blocks that would otherwise be considered not in a Rural Area only because the cluster is adjacent to not more than two census blocks that are otherwise considered not in a rural area under this definition.

(i) 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.

(ii) For the Commonwealth of Puerto Rico, the island is considered rural and eligible for Business Programs assistance, except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be eligible if they are ''not urban in character.'' Any such requests must be forwarded to the National Office, Business and Industry Division, with supporting documentation as to why the area is ''not urban in character'' for review, analysis, and decision by the Administrator, Business and Cooperative Programs.

(iii) For the State of Hawaii, all areas within the State are considered rural and eligible for Business Programs assistance, except for the Honolulu CDP within the County of Honolulu.

(iv) 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.

(v) The determination that an area is ''rural in character'' under this definition will be to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 population that is within one-quarter mile of a rural area.

II. Funding Information

A. *Available Funds.* Congress has appropriated mandatory funding for this program in the amount up to $20 million for FY 2009, to remain available until expended.

B. *Number of Payments.* The number of payments made will vary and be based on the number of applicants selected for award and availability of funds.

C. *Range of Amounts of Each Payment.* The amount of each payment will depend on the number of eligible applicants selected for award in the program, the amount of fossil fuel replaced, the cost effectiveness of the system, and the percentage reduction in fossil fuel use.

D. *Payment Limitations.* For the purposes of this program, the maximum payment an applicant may receive will be 50 percent of total eligible project costs or $5 million, whichever is less. Based on our research and survey of medium sized project costs, the Agency has determined that the dollar amount identified will provide adequate incentive for biorefineries to apply.

E. *Type of Instrument.* Payment Agreement.

III. Eligibility Information

This Notice contains eligibility requirements for applicants seeking payments under this program.

A. *Applicant Eligibility.* To be eligible for this program, the applicant must be an eligible biorefinery, defined in this Notice as a biorefinery in existence on or before June 18, 2008. Additionally, applicants must meet the citizenship requirement specified in paragraph (1) or (2), as applicable, of this section.

(1) If the applicant is an individual, the applicant must be a citizen or national 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 must reside in the U.S. after legal admittance for permanent residence.

(2) If the applicant is an entity other than an individual, the applicant must be at least 51 percent owned by persons who are either citizens or nationals 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 legally admitted permanent residents residing in the U.S.

(3) The Agency will determine an applicant's eligibility for participation in this program.

B. *Rural Area Requirement.* To be eligible for program payments, biorefinery must be located in a rural area.

C. *Payment Eligibility.* To be eligible for program payments, an applicant must submit a complete application for consideration of payment. Payments will be made based on ranking of applicants in relation to project cost, cost-effectiveness, the quantity of fossil fuels the renewable biomass system is replacing, the reduction of fossil fuel usage resulting from the installation of a renewable biomass system.

(D) *Ranking of Applications.* All scored applications will be ranked by the Agency as soon after the application deadline as possible. 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 payments.

(E) *Selection of Applications for Payments.* Using the ranking created under Section V, Application Review Information, the Agency will select applications for payments. The Agency will notify, in writing, all applicants whose applications have been selected for payments. Applicants whose applications have not been selected for payments will be notified in writing, with a brief explanation as to why.

(F) *Availability of funds.* If, after the majority of applications have been considered, insufficient funds remain to pay the next highest scoring application, the Agency may elect to pay 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 payment request to the amount of funds available. If the applicant agrees to lower its payment request, it must certify that the purposes of the project can be met, and the Administrator must determine the project is feasible at the lower amount.

G. *Application Package Contents.* Applicants are required to provide relevant data to allow for technical analysis of their existing facilities to demonstrate replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. Applicants in existence on or before June 18, 2008 with more than 24 months of actual operating data must provide data for the most recent 24-month period. Applicants in existence on or before June 18, 2008 with less than 24 months of actual operating data must provide 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

All applicants must submit the following information as part of their application package:

(1) *Contact Data.* Contact information for the primary technical contact for the biorefinery.

(2) *Biorefinery Data.* Basic information on facility operations over time (hours/day, days/year).

(3) *Electric Use Data.* Information on existing electric service to the facility, data on consumption, peak and average demand, and monthly/seasonal use patterns.

(4) *Fuel Use Data.* Information on natural gas and current fuel use for boilers and heaters, including fuel type, costs, and use patterns.

(5) *Thermal Loads.* Information on existing thermal loads, including type (steam, hot water, direct heat), conditions (temperature, pressure) and use patterns.

(6) *Existing Equipment.* Information on existing heating and cooling equipment, including type, capacities, efficiencies and emissions.

(7) *Site-Specific Data.* Information on other site-specific issues, such as expansion plans or neighborhood considerations that might impact the proposed new system design or operation; or environmental impacts.

(8) *Biofuel production.* Information on liquid biofuel production (gallons/year).

(9) *Feasibility Study.* The applicant must submit a feasibility study by an independent qualified consultant, which has no financial interest in the biorefinery, and demonstrates that the renewable biomass system of the biorefinery is feasible, taking into account the economic, technical and environmental aspects of the system. The study must include the following:

(i) Executive summary, including resume of the consultant.

(A) Introduction/project overview (brief general overview of project location, size, etc.)

(ii) Economic feasibility determination.

(A) Information regarding project site.

(B) Availability of trained or trainable labor.

(C) Availability of infrastructure and rail and road service to the site.

(iii) Technical feasibility determination.

(A) Report must be based upon verifiable data and contain sufficient information and analysis so that a determination may be made on the technical feasibility of achieving the levels of energy production that are projected in the statements.

(B) Report must also identify and estimate project operation and development costs and specify the level of accuracy of these estimates and the assumptions on which these estimates have been based. The project engineer or architect is considered an independent party provided neither any principal of the firm nor any individual of the firm who participates in the technical feasibility report has a financial interest in the project.

(iv) Financial feasibility determination.

(A) Reliability of the financial projections and assumptions on which the project is based including all sources of project capital, both private and public, such as Federal funds.

(B) Projected balance sheets and costs associated with project operations.

(C) Cash flow projections for the life of the project.

(D) Adequacy of raw materials and supplies.

(E) Sensitivity analysis, including feedstock and energy costs, product/co-product prices.

(F) Risks related to the project.

(G) Continuity, maintenance and availability of other records and adequacy of management.

(v) Management feasibility determination.

(vi) Recommendations for implementation.

(vii) Environmental aspects of the system.

(viii) Feedstock:

(A) Feedstock source management.

(B) Estimates of feedstock volumes and costs.

(C) Collection, pre-treatment, transportation, and storage.

(D) Impacts on existing manufacturing plants or other facilities that use similar feedstock.

(ix) Feasibility/plans of project to work with producer associations or cooperatives including estimated amount of annual feedstock.

H. *Eligible Project Costs.* Eligible project costs will be only for construction costs for repowering improvements associated with the equipment, installation, engineering, design, site plans, associated professional fees, permits and financing fees.

I. *Ineligible Project Costs.* Any project costs not directly associated with the repowering project and system incurred by the applicant prior to application for payment assistance under this program will be ineligible for payment assistance. A project is not eligible under this notice if it is using feedstocks for repowering that are feedgrains that received benefits under Title I of the Food, Conservation, and Energy Act of 2008.

IV. Application and Submission Information

A. *Address to Make Application.* Application must be made to USDA, Rural Development-Energy Division, Program Branch, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225.

B. *Content and Form of Submission.* Applicants must submit a signed original and one copy of an application containing all the information required in this section. The applicant must also furnish the Agency the required documentation identified in the following forms to verify compliance with program provisions before acceptance into the program:

- Form RD 9004–1, Part C; and
- Form RD 9004–2, Part H; and
- Form RD 9004–3, Part E.

Note that applicants are required to have a Dun and Bradstreet Universal Numbering System (DUNS) number (unless the applicant is an individual). The DUNS number is a nine-digit identification number, which uniquely identifies business entities. A DUNS number 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*. In addition to the previously referenced feasibility study, applicants must submit to the Agency the following:

(1) Form RD 9004–1, ''Repowering Assistance Program Application''. Applicants must submit this form and all necessary attachments providing project information on the biorefinery; the facility at which the biorefinery operates, including location and products produced; and the types and quantities of renewable biomass feedstock being proposed to produce heat or power. This form requires the applicant to provide relevant data to allow for technical analysis of their existing facility to demonstrate replacement of fossil fuel by renewable biomass with reasonable costs and maximum efficiencies. Applicant must also submit evidence that the biorefinery was in existence on or before June 18, 2008. The applicant is required to certify the information provided.

(2) Form RD 9004–2, ''Repowering Assistance Program Agreement''.

(3) RD Instruction 1940–Q, Exhibit A–1, ''Restriction on Lobbying (if over $100,000)''.

(4) Form RD 400–1, ''Equal Opportunity Agreement''.

(5) Form RD 400–4, ''Assurance Agreement''.

(6) Form RD 1940–20, ''Request for Environmental Information''.

(7) Certifications. The applicant must furnish the Agency all required certifications before acceptance into the program, and furnish access to records required by the Agency to verify compliance with program provisions. Applicant must submit forms or other written documentation certifying to the following:

(i) AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions'' or other written documentation.

(ii) AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions'' or other written documentation.

(8) SF–LLL, ''Disclosure of Lobbying Activities''.

C. *Submission Dates and Times.* For FY 2009, the application period is July 1, 2009 through November 1, 2009.

D. *Multiple Submissions.* Only one application from corporations and entities with more than one biorefinery location will be eligible under this Notice. A project that serves multiple biorefineries located at the same location is an eligible project provided the heat and power are centrally produced.

V. Application Review Information

The Agency is evaluating projects based on the cost, cost-effectiveness, and capacity of projects to reduce fossil fuels. The cost of the project is taken into consideration in the context of each project's ability to economically produce energy from renewable biomass to replace its dependence on fossil fuels. Projects with higher costs that are less efficient will not score well. The scoring criteria are designed to evaluate projects on simple payback as well as the percentage of fossil fuel reduction.

Submission of an application neither reserves payments nor ensures payments. The Agency will evaluate each application and make a determination as to whether the applicant is eligible, whether the proposed project is eligible, and whether the proposed payment request complies with all applicable statutes and regulations. This evaluation will be based on the information provided by the applicant and on other sources of information, such as recognized industry experts from the Agricultural Research Service and the Forest Service. The Agency will score each application in order to prioritize each proposed project. The maximum number of points awardable to any applicant will be 100.

The evaluation criteria that the Agency will use to score these projects are as follows.

A. *Cost.* Payment will not exceed 50 percent of the total eligible project costs associated with the project or $5 million, whichever is less. Points will be awarded to applicants based on their ability to demonstrate the availability of sufficient other funding to complete the project. The applicant must provide evidence, satisfactory to the Agency, showing they have sufficient funds or commitment of funds to complete the project, including applicant financial statements or lender commitment letters. A maximum of 10 points will be awarded as follows:

(1) Applicant demonstrates availability of all funding needed to complete the project, award 10 points.

(2) Applicant does not demonstrate the availability of all the funding needed to complete the project, no points will be awarded.

B. *Cost-Effectiveness.* Cost-effectiveness will be scored based on the anticipated return on investment (ROI). Anticipated ROI will be demonstrated by calculating documented base energy use costs for the 24-month period prior to submission of the application or must provide at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

(1) ROI is equal to the simple payback period.

• ROI = C/S; where C = capital expenses; and S = savings in annual operating costs.

• Example: Capital expenses, including handling equipment, biomass boiler, piping improvements and plant modifications, are equal to $5,300,500. The annual difference in fossil fuel cost versus the cost for renewable biomass is $990,500. Assume these costs and uses are based on a yearly operating cycle, which may include handling, storage and treatment costs. In this example, C = $5,300,500; S = $990,500; ROI = 5.35 years (C/S = ROI).

(2) A maximum of 30 points will be awarded as follows:

(i) If the anticipated ROI is less than or equal to four years, up to award 30 points.

(ii) If the anticipated ROI is greater than four years but less than or equal to six years, award up to 10 points.

(iii) If the anticipated ROI will be greater than six years, award 0 points.

C. *Percentage of Reduction of Fossil Fuel Use.* The anticipated percent of reduction in the use of fossil fuels will be measured using the same evidence provided by the applicant for measuring cost-effectiveness. However, this set of criteria will measure actual fossil fuel use for the 24-month period prior to submission of the application or for at least 12 months of data supported by engineering and design calculations, and site plans, prepared by the construction engineering firm.

Note: Fossil fuel use in terms of electric usage will be evaluated by using generating information provided by the Energy Information Agency (EIA). Not all electric generated power originates from fossil fuels, based on the definition in Section I of this notice. The Agency will determine the percentage reduction of fossil use based on and in cooperation with the applicant's submission of electric power provider contracts, power agreements, and utility billings in relation to available information from the EIA.

A maximum of 25 points will be awarded as follows:

(1) Applicant demonstrates an anticipated reduction in fossil fuel use of 100 percent, award 25 points.

(2) Applicant demonstrates an anticipated reduction in fossil fuel use of at least 80 percent but less than 100 percent, award 20 points.

(3) Applicant demonstrates an anticipated reduction in fossil fuel use of at least 60 percent but less than 80 percent, award 15 points.

(4) Applicant demonstrates an anticipated reduction in fossil fuel use of at least 40 percent but less than 60 percent, award 10 points.

(5) Applicant demonstrates an anticipated reduction in fossil fuel use of at least 30 percent but less than 40 percent, award 5 points.

(6) Applicant demonstrates an anticipated reduction in fossil fuel use of less than 30 percent, award 0 points.

D. *Renewable Biomass Factors.* Applicants must demonstrate the availability of the project-specific renewable biomass for the project. If the biorefinery has a commitment or contract for biomass feedstocks a maximum of 10 points will be awarded as follows:

(1) Applicant demonstrates acceptable evidence of 100 percent biomass availability, award 10 points.

(2) Applicant demonstrates acceptable evidence of 50 percent or greater biomass availability, award 5 points.

(3) Applicant is unable to demonstrate acceptable evidence of biomass availability, award 0 points.

E. *Technical Review Factors.* Technical reviews will be conducted by a team of experts, including rural energy coordinators and state engineers. The Agency may engage the services of other government agencies or other recognized industry experts in the applicable technology field, at its discretion, to evaluate and rate the application. Each section of the technical review will be scored within a range of possible points available within that section. A maximum of 25 points will be awarded as follows:

(1) *Qualifications of the Applicant's Project Team.* The applicant must describe its qualifications in terms of those individuals who will be essential to successful performance of the proposed project. This will include information regarding professional credentials, relevant experience, and education, and must be supported with documentation of service capabilities, professional credentials, licenses, certifications, and resumes, as applicable. Award 0–5 points.

(2) *Agreements and Permits.* The applicant must describe the agreements and permits necessary for project implementation. An Agency-acceptable schedule for securing the required documents and permits must be provided. Award 0–3 points.

(3) *Design and Engineering.* The applicant has described the design, engineering, and testing needed for the proposed project. This description supports that the system will be designed, engineered, and tested so as to meet its intended purpose, ensure public safety, and comply with all applicable laws, regulations, agreements, permits, codes, and standards. Award 0–5 points.

(4) *Project Development Schedule.* The applicant has provided a detailed plan for project development including a proposed schedule of activities, a description of each significant task, its beginning and end, and its relationship to the time needed to initiate and carry the project through to successful completion. This description must address the applicant's project development cash flow requirements. Award 0–3 points.

(5) *Equipment Procurement.* The applicant must describe the equipment needed, and the availability of the equipment needed, to complete installation and activation of the new system. The description supports that the required equipment is available, and can be procured and delivered within the proposed project development schedule. Award 0–3 points.

(6) *Equipment Installation.* The applicant has provided a satisfactory description of the plan for site development and system installation that reflects the soundness of the project plan. Award 0–3 points.

(7) *Operations and Maintenance.* The applicant has described the operations and maintenance requirements of the system necessary for the system to

operate as designed and provide the savings and efficiencies as described. The description and requirements noted must be supportable by the technical review. Award 0–3 points.

VI. Program Payment Provisions

Applicants must agree to the terms and conditions of the payment program's provisions. This section of the Notice identifies the process and procedures the Agency will use to make payments to eligible biorefineries.

A. *Payment Applications.* To request payments under this program during a FY, an eligible biorefinery must:

(1) Submit Form RD 9004–3, ''Repowering Assistance Program-Payment Request''.

(i) Upon completion of the project or project improvements, the first payment will be paid at the rate not to exceed 20 percent of the project award. Subsequent semiannual payments will be paid based on actual measured renewable biomass energy production at a rate of 50 cents per million British thermal units (MMBTUs), up to the limit of the award.

(ii) After processing an initial payment, additional payments may be processed semiannually with the submission of Form RD 9004–3. This form must be accompanied by measurement and verification records including metered data demonstrating displacement of fossil fuel use from the conversion to renewable biomass. Payment will be at the rate of 50 cents per MMBTU up to and until the project payment limit has been reached.

(2) Certify that the request is accurate.

(3) Furnish the Agency such certifications and access to records that verify compliance with program provisions.

(4) Provide documentation, as requested by the Agency, regarding the production of usable energy at the biorefinery during the relevant payment period. Approved documentation for payment and verification of energy production from renewable biomass must include the following:

(i) Metered data documenting the production of heat, gas and power must be obtained utilizing an Agency approved measurement device.

(ii) Metered data must be verifiable and subject to independent calibration testing.

(iii) Applicant must present payment request for energy production in units of MMBTU and request payment based on verifiable and documented data.

(iv) Applicant must present receipts for drop shipments of and use of renewable biomass as applicable for the corresponding period in which they are requesting payments. Applicant must also present the current utility billing data from the same utilities used in the base energy use period for the corresponding payment request period.

B. *Additional Documentation.* After semiannual payment applications are submitted, eligible biorefineries may be required to submit additional supporting clarification if their original submittal is not sufficient to verify eligibility for payment.

C. *Notification.* The Agency will notify the biorefinery, in writing, whenever the Agency determines that a payment application is ineligible and why the application was determined ineligible.

D. *Payment Provisions.* After the initial payment, payments to eligible applicants will be made based on energy produced as measured in output MMBTUs.

E. *Payment Amounts.* An eligible biorefinery may receive a payment in an amount as determined according to the procedures specified in this section, subject to the availability of funds. The Agency will determine total available funds.

F. *Verification.* The Agency reserves the right to verify all payment requests and subsequent payments made under this program, including field visits, as frequently as necessary to ensure the integrity of the program. Documentation provided will be used to verify, reconcile, and enforce the payment terms of the agreement along with any potential refunds that the recipient will be required to make should they fail to adequately document their request. The required documentation is given in RD form 9004–3, the Repowering Program Payment Request, which details and provides that the requester demonstrate a reduction in fossil fuel use by providing concurrent readings from their previously metered usage, along with the readings from the metered, measured, and verifiable production of renewable energy from renewable biomass.

G. *Payment adjustments.* The Agency may make adjustments to payments otherwise payable to the biorefinery if it finds there is a difference between the quantity of fossil fuel actually replaced by renewable biomass and the quantity certified to in a payment application.

H. *Refunds and Interest Payments.* An eligible biorefinery that has received a payment under this program may be required to refund such payment as specified in this paragraph.

(1) An eligible biorefinery receiving payment under this program will become ineligible if the Agency determines the producer has:

(i) Made any material fraudulent representation; or

(ii) Misrepresented any material fact affecting a program determination.

(2) All payments made to a biorefinery determined by the Agency to be ineligible must be refunded to the Agency with interest and other such sums as may become due, including, but not limited to, any interest, penalties, and administrative costs, as determined appropriate under 31 CFR 901.9.

(3) When a refund is due, it must be paid promptly. If a refund is not made promptly, the Agency may use all remedies available to it, including Treasury offset under the Debt Collection Improvement Act of 1996, financial judgment against the producer, and sharing information with the Department of Justice.

(4) Late payment interest will be assessed on each refund in accordance with provisions and rates as determined by the Agency.

(i) Interest charged by the Agency under this program will be at the rate established annually by the Secretary of the U.S. Treasury pursuant to 31 U.S.C. 3717. Interest will accrue from the date payments were received by the biorefinery to the date of repayment, or the date of an interest increase, as determined in accordance with applicable regulations.

(ii) The Agency may waive the accrual of interest and/or damages if the Agency determines that the cause of the erroneous determination was not due to any action of the biorefinery.

(5) Any biorefinery or person receiving payment under this program will be jointly and severally liable for any refund or related charges due under this program.

VII. 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, and will assign the applicant an agreement number. 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 applicants will have appeal rights as specified in this Notice.

B. *Conditions for Receipt of Payment.* A signed copy of Form RD 9004–2, ''Repowering Assistance Program-Agreement'', will be required for payment.

C. *Administrative and National Policy Requirements.* In the event that all program funds are not expended in 2010 and/or discretionary money becomes available, then the Agency will proceed with a rulemaking process.

(1) *Review or appeal rights.* Any person or entity who has applied for payments or whose right to receive payments under this program who is adversely affected by a decision by the Agency may appeal such decision to the USDA National Appeals Division pursuant to 7 CFR Part 11.

(2) *Remedies.* The remedies provided in this Notice will be in addition to other civil, criminal, or administrative remedies that may apply.

(3) *Records.* For the purpose of verifying compliance with the requirements of this Notice, each biorefinery must make available and provide for the metering of all power and heat producing boilers, containment vessels, generators and any other equipment related to the production of heat or power required to displace fossil fuel loads with renewable biomass. These records must be held in one place and be available at all reasonable times for examination by the Agency. Such records include all books, papers, contracts, scale tickets, settlement sheets, invoices, written price quotations, and any other documents related to the program that are within the control of the biorefinery. These records must be held and made available for Agency examination for a period of not less than three years from each payment date.

(4) *Succession and control of facilities and production.* Any party obtaining a biorefinery that is under this program must request permission to participate in this program as a successor. The Agency may grant such request if it is determined that, the party is eligible, and permitting such succession would serve the purposes of the program. If appropriate, the Agency may require the consent of the previous party to such succession. Also, the Agency may terminate payments and demand full refund of payments made if a party loses control of a biorefinery whose production of heat or power from renewable biomass is the basis of a program payment, or otherwise fails to retain the ability to assure that all program obligations and requirements will be met.

D. *Environmental Review.* All recipients under this subpart are subject to the requirements of 7 CFR Part 1940, subpart G.

E. *Civil Rights Requirements.* The Agency will comply with the civil rights law and compliance requirements in accordance with 7 CFR Part 1901–E. This program is subject to Executive Order 12898, Environmental Justice, and RD Instruction 2006–P.

VIII. Agency Contacts

Notice Contact. For further information about this Notice, please contact USDA, Rural Development-Energy Division, Program Branch, Attention: Frederick Petok, Stop 3225, Room 6870, 1400 Independence Avenue, SW., Washington, DC 20250–3225. Telephone: (202) 690–0784.

Technical Assistance. For technical assistance on this payment program, please contact the USDA, Rural Development-Energy Division, Attention: Repowering Assistance Program, 1400 Independence Avenue, SW., Stop 3225, Washington, DC 20250–3225. Telephone: (202) 720–1400.

IX. 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 programs. (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 TTY). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, Room 326–W, Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–9410, or call (800) 795–3272 (voice) or (202) 720–5964 (voice and TDD). USDA is an equal opportunity provider and employer.

Dated: June 8, 2009.

Judith A. Canales,

Administrator, Rural Development, Business and Cooperative Programs.

[FR Doc. E9–13804 Filed 6–11–09; 8:45 am]

BILLING CODE;P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Mandatory Shrimp Vessel and Gear Characterization Survey.

OMB Control Number: 0648–0542.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 667.

Number of Respondents: 2,000.

Average Hours per Response: 20 minutes.

Needs and Uses: Census-level information on fishing vessel and gear characteristics in the Gulf of Mexico Exclusive Economic Zone (EEZ) shrimp fishery are needed as supplemental information necessary to conduct economic, social, and biological analyses that will improve fishery management decision-making in this fishery; ensure that national goals, objectives, and requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MFCMA, 16 U.S.C. 1801 *et seq.*), National Environmental Policy Act (NEPA), Regulatory Flexibility Act (RFA) and Executive Order (E.O.) 12866 are met; and quantify achievement of the performance measures in the National Marine Fisheries Service's Strategic Operating Plans. This information is vital in assessing the economic, social, and biological effects of fishery management decisions and regulations on individual shrimp fishing enterprises, fishing communities, and the nation as a whole.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov*.

Dated: June 8, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–13764 Filed 6–11–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Highly Migratory Species Tournament Registration and Reporting.

OMB Control Number: 0648–0323.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 110.

Number of Respondents: 300.

Average Hours Per Response: Registration, 2 minutes; reporting, 20 minutes.

Needs and Uses: Under the authorization of the Magnuson-Stevens Fishery Conservation and Management Act and the Atlantic Tunas Convention Act, the National Marine Fisheries Service (NMFS) requires that operators of fishing tournaments involving Atlantic Highly Migratory Species (HMS) provide advance identification of the tournament (registration) and then, for selected tournaments, provide summary information after the tournament is completed (reporting) on the HMS caught, whether they were kept or released, the length and weight of the fish, and other information. Most of the data required for post-tournament reporting is already collected in the routine course of tournament operations. The data collected is needed by NMFS to estimate the total annual catch of these species, to evaluate the impact of tournament fishing in relation to other types of fishing, and to evaluate the impact of HMS management measures on tournament operations.

Affected Public: Business or other for-profit organizations; not for-profit institutions.

Frequency: Annually and on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: June 8, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–13763 Filed 6–11–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Interagency Electronic Reporting System.

OMB Control Number: 0648–0515.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 19,084.

Number of Respondents: 239.

Average Hours per Response: eLandings registration, 15 minutes; landing reports, 35 minutes; production reports: at sea, 20 minutes; shoreside, 10 minutes.

Needs and Uses: The interagency electronic reporting system (IERS) was implemented for use in the fisheries of the Exclusive Economic Zone (EEZ). National Marine Fisheries Service (NMFS) requires that eLandings, the data entry component of IERS, be used as a single reporting system for commercial harvest and production of groundfish (including rockfish), Pacific halibut, and certain species of crab. eLandings allows processors and others to make all three required landings reports with a single reporting system to NMFS, the International Pacific Halibut Commission (IPHC), and Alaska Department of Fish and Game (ADF&G). NMFS collects groundfish harvest and production data for Fishery Management Plan (FMP) species in the EEZ (FMPs are prepared and amended as authorized by the Magnuson-Stevens Fishery Conservation and Management Act). ADF&G collects harvest data for groundfish species taken in the State of Alaska (State) waters, and has responsibility for some fisheries in the EEZ, such as lingcod and black rockfish. ADF&G and NMFS cooperatively manage the Crab Rationalization Program fisheries. NMFS and IPHC cooperatively manage Individual Fishing Quota (IFQ) Pacific halibut in both State waters and in the EEZ.

Affected Public: Business or other for-profit organizations.

Frequency: Daily and weekly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov.*

Dated: June 9, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–13806 Filed 6–11–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Proposed Information Collection; Comment Request; Public Telecommunications Facilities Program Grant Monitoring

ACTION: Notice.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before August 11, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Forms Clearance Officer, Department of Commerce, Room 7845, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via e-mail to *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Clifton Beck, NTIA, Room

H–4888, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via e-mail to *cbeck@ntia.doc.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The purpose of the Public Telecommunications Facilities Program is to assist, through matching funds, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

- Extend delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;
- Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and
- Strengthen the capability of existing public radio and television stations to provide public telecommunications services to the public.

The reports submitted by the grantees include:

- Construction schedule/planning timetable (one time).
- Performance reports (quarterly).
- Close-out materials after completion of the project (one time).
- Annual reports for the duration of the government's interest in the equipment (annually for a ten-year period).

II. Method of Collection

The reports may be submitted by mail, fax, or the Internet (beginning in FY 2010, all reports will be submitted over the Internet).

III. Data

OMB Control Number: 0660–0001.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions, state or local government agencies.
Estimated Number of Total Respondents: 1,940.
Estimated Time Per Response: 2 hours and 30 minutes.
Estimated Total Annual Burden Hours: 5,080.
Estimated Total Annual Cost to the Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.,* the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection. Comments will also become a matter of public record.

Dated: June 9, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–13805 Filed 6–11–09; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–331–802]

Certain Frozen Warmwater Shrimp from Ecuador: Notice of Extension of Time Limit for the Final Results of the Third Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 12, 2009.

FOR FURTHER INFORMATION CONTACT: Gemal Brangman at (202) 482–3773, or David Goldberger at (202) 482–4136, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 9, 2009, the Department of Commerce (the Department) published a notice for the preliminary results of the administrative review of the antidumping duty order on certain frozen warmwater shrimp from Ecuador covering the period February 1, 2007, through August 14, 2007. *See Certain Frozen Warmwater Shrimp from Ecuador: Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 9983 (March 9, 2009). The final results for this administrative review are currently due no later than July 7, 2009, 120 days from the date of publication of the preliminary results of review.

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

The Department determines that completion of the final results of the review within the original time limit is not practicable. Due to the complexity of the issues raised in this review, the Department requires additional time to review and analyze them in order to complete this review. Therefore, the Department is extending the time limit for completion of the final results of this review by 60 days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due no later than September 8, 2009.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 8, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–13875 Filed 6–11–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–AV00

Atlantic Highly Migratory Species; Essential Fish Habitat

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a final integrated environmental impact statement and fishery management plan amendment.

SUMMARY: NMFS announces the availability of a final integrated environmental impact statement (EIS) and fishery management plan (FMP) amendment pursuant to the National Environmental Policy Act (NEPA) that revises existing Highly Migratory Species (HMS) Essential Fish Habitat (EFH); establishes a new Habitat Area of

Particular Concern (HAPC) for bluefin tuna (BFT) in the Gulf of Mexico; and includes conservation recommendations for fishing and non-fishing impacts on EFH consistent with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other relevant Federal laws. Approval of the amendment will be concurrent with approval of the Record of Decision and will occur following the 30–day waiting period on the FEIS.

DATES: Please refer to an upcoming U.S. Environmental Protection Agency (EPA) **Federal Register** notice regarding this action, EPA's notice is expected to publish in the **Federal Register** within the next week.

ADDRESSES: Copies of the integrated EIS/FMP amendment are available from the Highly Migratory Species Management Division, NMFS/SF1, 1315 East-West Highway, Silver Spring, MD 20910, or by contacting Chris Rilling at (301) 713–2347 or by emailing *chris.rilling@noaa.gov*. Electronic copies are also available on the HMS website under Breaking News at *http://www.nmfs.noaa.gov/sfa/hms/*.

FOR FURTHER INFORMATION CONTACT: Chris Rilling or Sari Kiraly by phone at (301) 713–2347 or by fax at (301) 713–1917.

SUPPLEMENTARY INFORMATION:

Background

The Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) as amended by the Sustainable Fisheries Act (Public Law 104–297) requires the identification and description of EFH in FMPs and the consideration of actions to ensure the conservation and enhancement of such habitat. The EFH regulatory guidelines (50 CFR 600.815) state that NMFS should periodically review and revise EFH, as warranted, based on available information.

EFH, including HAPCs, for HMS was first identified and described in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, and in the 1999 Amendment 1 to the Atlantic Billfish FMP. EFH for five shark species was updated in the 2003 Amendment 1 to the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks. NMFS reviewed all new and existing EFH data in the 2006 Consolidated HMS FMP and determined that revisions to existing EFH for some Atlantic HMS may be warranted. This final amendment to the 2006 Consolidated HMS FMP (hereafter Final Amendment 1) amends the existing EFH identifications and descriptions, and designates a new HAPC for BFT in the Gulf of Mexico.

On November 7, 2006 (71 FR 65088), NMFS published a Notice of Intent to prepare an EIS to examine alternatives for updating existing HMS EFH, consider additional HAPCs, analyze fishing gear impacts, and if necessary, identify ways to avoid or minimize, to the extent practicable, adverse fishing impacts on EFH consistent with the Magnuson-Stevens Act and other relevant Federal laws. On the same day, NMFS also made available a Pre-Draft of Amendment 1 that included a general description of the approaches being considered to update EFH, considered new HAPCs, and where applicable, recommendations to minimize fishing impacts. The Pre-Draft also served to obtain additional information and input from the public and Atlantic HMS Consulting Parties on potential options or alternatives to consider prior to development of the Draft EIS for Amendment 1 of the Consolidated HMS FMP. Two scoping meetings were held in conjunction with the HMS Advisory Panel (AP) meetings in March 2007 (72 FR 7860; February 21, 2007) and October 2007 (72 FR 49264; August 28, 2007).

Based in part on the comments received during scoping and from the HMS AP, on September 19, 2008, NMFS released Draft Amendment 1 to the Consolidated HMS FMP and the associated Notice of Availability (73 FR 54384). The public comment period was originally scheduled to end on November 18, 2008, however it was subsequently extended (73 FR 66844, November 12, 2008) and reopened until December 12, 2008, to provide the Regional Fishery Management Councils, the Interstate Marine Fisheries Commissions, and the public additional opportunity to submit comments.

Draft Amendment 1 proposed to update HMS EFH boundaries using new data and a new approach for mapping EFH, and proposed to designate a new HAPC for BFT in the Gulf of Mexico. Draft Amendment 1 also included an analysis of fishing and non-fishing impacts on EFH as required by the Magnuson-Stevens Act and the EFH regulations. NMFS consulted with the HMS AP; the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf of Mexico Fishery Management Councils; and the Gulf and Atlantic States Marine Fisheries Commissions. Since NMFS was not proposing new regulations with respect to EFH, NMFS did not prepare a proposed rule in conjunction with the DEIS. The summary of the comments received and NMFS' responses are provided below. Based on these public comments, NMFS made some changes to the EFH and HAPC boundaries as outlined in Final Amendment 1.

Changes from the Draft Amendment 1

1. Draft Amendment 1 considered several alternatives for updating HMS EFH. The preferred alternative to identify EFH based on the 95 percent probability boundary was not changed in Final Amendment 1. This approach was selected as the preferred alternative because it is based on the actual data points and provides a standardized, transparent, and reproducible method for delineating EFH. However, in some cases, the 95 percent probability boundaries were modified following additional analysis of the data and consultation with NMFS scientists familiar with the biology, life history, and habitat requirements of the species. These changes may have incorporated new areas known by species experts to be EFH, or conversely, may have removed areas that were not considered EFH for some species. The final boundaries are available as maps in the Final Amendment 1 and on the interactive webpage at *http://sharpfin.nmfs.noaa.gov/website/EFH_Mapper/HMS/map.aspx*.

2. To further the conservation and enhancement of EFH, the EFH guidelines encourage the identification of HAPCs. HAPCs are areas within EFH that should be identified based on one or more of the following considerations: 1) the importance of the ecological function provided by the habitat; 2) the extent to which the habitat is sensitive to human-induced environmental degradation; 3) whether, and to what extent, development activities are, or will be stressing the habitat type; and 4) the rarity of the habitat type. HAPCs can be used to focus conservation efforts on specific habitat types or areas that are especially important ecologically or particularly vulnerable to degradation. HAPCs are not required to have any specific management measures and a HAPC designation does not automatically result in closures or other fishing restrictions. Rather, the areas are intended to focus conservation efforts and bring heightened awareness to the importance of the habitat being considered as a HAPC.

Draft Amendment 1 considered several alternatives for designating HAPCs for BFT spawning areas in the Gulf of Mexico. Data used to delineate the HAPC boundary included NMFS observer program data, NMFS larval surveys, pop-up archival tag (PAT) data, pop-up satellite archival tag (PSAT) data, and peer-reviewed publications that include information highlighting the importance of the central Gulf of

Mexico as a BFT spawning area. Although there are no direct environmental effects of designating the BFT HAPC, the designation could help identify additional conservation efforts to minimize the impacts on BFT spawning habitat. Based on public comment, additional analysis of the data, and consultation with NMFS scientists familiar with the biology, life history, and habitat requirements of the species, NMFS modified the BFT HAPC boundary west of 86 degrees West longitude to follow the 100 meter isobath in the Gulf of Mexico and extending to the Exclusive Economic Zone (EEZ) boundary. The final HAPC boundary is available as a map in the Final Amendment 1 and on the interactive webpage at *http://sharpfin.nmfs.noaa.gov/website/EFH__Mapper/HMS/map.aspx*.

Fishing and Non-Fishing Activities

In addition to considering revisions to existing EFH and designating new HAPCs, the EFH guidelines require that FMPs identify fishing and non-fishing activities that may adversely affect EFH. Each FMP must include an evaluation of the potential adverse impacts of fishing on EFH designated under the FMP, effects of each fishing activity regulated under the FMP, as well as the effects of other Federal FMPs and non-federally managed fishing activities (i.e., state fisheries) on EFH. The FMPs must describe each fishing activity and review and discuss all available relevant information such as the intensity, extent, and frequency of any adverse effects on EFH; the type of habitat within EFH that may be adversely affected; and the habitat functions that may be disturbed (50 CFR 600.815(a)(2)). If adverse effects of fishing activities are identified, then the Magnuson-Stevens Act requires the effects of such fishing activities on EFH to be minimized to the extent practicable (Magnuson-Stevens Act section 303(a)(7)).

NMFS completed the original analysis of fishing and non-fishing impacts in the 1999 FMP for Atlantic Tunas, Swordfish, and Sharks, and included a comprehensive review of all fishing gears and non-fishing activities that could potentially impact EFH in the 2006 Consolidated HMS FMP. In that FMP, NMFS preliminarily concluded that no HMS gear, other than bottom longline, was likely to have an effect on HMS or other managed species' EFH since most HMS gears such as rod and reel, handline, and pelagic longline, are fished in the water column where they are unlikely to affect either the water column or benthic habitat that define EFH for managed species. Bottom longline gear is used predominantly in the Atlantic commercial shark fishery to target large and small coastal sharks. The 2006 Consolidated HMS FMP also indicated that additional analyses would be initiated to determine the extent to which bottom longline gear might be impacting specific habitats such as coral reefs, which are generally considered the habitat type most likely to be adversely affected by bottom longline gear.

The Draft Amendment 1 included an assessment of whether HMS bottom longline gear is used in EFH; an analysis of the intensity, extent, and frequency of such impacts; and a determination as to whether those impacts are more than minimal and not temporary. The ''more than minimal and not temporary'' threshold was established by NMFS as the necessary threshold for taking additional action to minimize such impacts. Based on the analysis, NMFS has determined that while BLL gear in general may have an effect on EFH, shark BLL gear as currently used in the shark fishery was not having more than a minimal and temporary effect on EFH. As a result, NMFS did not propose or finalize any measures to regulate shark BLL fishing in association with EFH. The findings are based on shark bottom longline observer program data which indicate that only a small fraction of bottom longline sets occur within coral reef habitat in addition to other recent measures implemented in Amendment 2 to the 2006 Consolidated HMS FMP for the Atlantic shark fishery, which greatly reduced fishing effort in the Atlantic shark fishery (73 FR 35778; June 24, 2008, and corrected at 73 FR 40658; July 15, 2008). NMFS will continue to work with the Regional Fishery Management Councils to identify areas where bottom longline gear used in the reef fish fishery or snapper grouper fishery may be having an adverse effect on habitat, and where the Councils may consider measures to reduce impacts. In those cases, NMFS may consider complementary regulations to prohibit shark bottom longline gear as was done in the Caribbean (72 FR 5633, February 7, 2007) and most recently in the South Atlantic Marine Protected Areas (73 FR 40658, July 15, 2008).

The Gulf of Mexico Fishery Management Council is currently developing a final programmatic environmental impact statement (FPEIS)/FMP for offshore aquaculture in the Gulf of Mexico. Based on public comments concerning the impacts of aquaculture projects on EFH and the BFT HAPC in particular, NMFS included a section in Chapter 6 of the FEIS describing the Aquaculture FPEIS, the potential impacts of offshore aquaculture, and recommended conservation measures.

Response to Comments

Public comments on Draft Amendment 1 were accepted at the HMS AP meeting, Fishery Management Council meetings, and public hearings, as well as written comments submitted electronically to *HMSEFH@noaa.gov* or mailed during the comment period. A total of 34 comment letters or postings were received from Federal and state resource and environmental agencies, fishing industry, environmental groups, recreational fishing interests, and the public. In addition, NMFS received 1,035 form letters expressing support for the BFT HAPC in the Gulf of Mexico (an example is provided in Appendix 2 of the FEIS). All comments were considered by NMFS in development of this FEIS and are included in Appendix 2. For purposes of indicating how comments were considered in development of this FEIS and Final Amendment 1, the comments are grouped into subject headings of EFH designations, HAPCs, and impacts on EFH.

1. Essential Fish Habitat Designations

Comment 1: NMFS should include information from catches of blacktip, sandbar, and dusky sharks that appear to overwinter in Mexican waters. The data would indicate that NMFS should consider a secondary sandbar shark nursery ground off Brownsville, Texas.

Response: While NMFS agrees that considering habitat use by HMS and other federally managed species outside the U.S. EEZ is important, EFH cannot be designated outside the U.S. EEZ and therefore NMFS did not seek information on sharks from countries other than the United States. In fact, BFT is the only HMS for which NMFS has data from within Mexican waters. Blacktip shark is the only shark species referred to be the commenter where available U.S. information was sufficient to identify EFH for all three life stages. Although there were isolated catches of sandbar and dusky sharks off southern Texas, there was insufficient information to identify EFH for either species off Brownsville, Texas. NMFS would need additional data or information to support an EFH designation for sandbar or dusky sharks off Brownsville.

Comment 2: NMFS should consider separate EFH areas for blacknose sharks in the Gulf of Mexico and those in the

Atlantic, and consider incorporating shrimp trawl data.

Response: In the 2007 blacknose shark stock assessment, the assessment scientists decided after reviewing the available data, that blacknose sharks should be assessed as a single stock. The scientists noted that there was conflicting genetic data regarding the existence of two separate stocks, and they recognized the potential differences in the reproductive cycle for South Atlantic and Gulf of Mexico populations. However, given that the stock assessment did not consider blacknose to be comprised of two separate stocks, NMFS has decided to keep the EFH areas for blacknose sharks as a single EFH designation. It should be noted that the EFH boundaries in the Atlantic and Gulf of Mexico are similar in size and scope, indicating that both areas play an important role in the life history and habitat requirements for blacknose sharks.

Comment 3: The disadvantage of the preferred alternative (alternative 3) is that data-poor species result in smaller, discontinuous areas of EFH than data-rich species. The species with limited habitat data should be clearly listed, as well as an approach to try to verify or modify these EFH boundaries to ensure they are protective; the DEIS does not provide adequate information to show that this is a protective approach for all species covered.

Response: NMFS agrees that, depending upon the number of data points, data poor species tend to result in smaller, discontinuous areas of EFH than data rich species. To help address this concern, NMFS combined data from all three life stages for some of the data poor species. Examples include angel shark, basking shark, and bigeye thresher, among others. NMFS has provided a complete list of species for which data from two or more life stages were combined in Table 5.3 of the FEIS. In some cases, the increase in the number of data points helped alleviate some of the patchiness in the EFH boundaries. In other cases, it may not have helped, and NMFS scientists familiar with the habitat requirements for the species may have recommended that, where appropriate, and where there was specific knowledge of the habitat utilized by certain life stages, that the smaller discontinuous areas be manually combined into a single continuous area. Examples where this approach was used include smooth hammerhead sharks and common thresher shark. There may have been some species for which NMFS was unable to make further adjustments due to lack of additional data and smaller, discontinuous areas may still be evident.

Comment 4: A discussion should be provided to discuss the monitoring plans, data gaps, and how future EFH related data will be obtained and used.

Response: Chapter 7 of the FEIS provides an update of research and information needs for each of the major HMS stocks (tunas, swordfish, billfish, and sharks) as well as the information gaps and how best to address them.

Comment 5: How can NMFS illustrate EFH in state waters? Has NMFS ground truthed EFH in state waters with the research surveys being done by the states?

Response: Depending upon the species and life stage, NMFS may have identified portions of state waters as EFH. This is more likely to be the case for sharks, which use coastal bays and estuaries as nursery and pupping grounds, than for other HMS such as tunas and billfish which tend to be further offshore and occur less frequently in state waters. It may also depend upon the extent of the state's seaward boundary. Both Florida (west coast) and Texas have 9 nautical mile territorial sea boundaries which may encompass EFH for a number of HMS. For sharks that occur in state waters, many of the data points used to designate EFH were drawn from individual researchers who may have contributed to the NMFS Cooperative Atlantic States Shark Pupping and Nursery Areas (COASTSPAN) program and the synthesis document ''Shark nursery grounds of the Gulf of Mexico and the east coast waters of the United States'' (McCandless et al., 2007). Although not every research survey done in a state may have been included in the analysis, a considerable amount of data was included from surveys or data collected by other means in state waters, including fishery independent surveys conducted by states.

Comment 6: What kind of data was used to map EFH in estuaries?

Response: As described in the previous response and more thoroughly in Chapters 2 and 4 of the FEIS, NMFS used observer program data, data from individual researchers, scientists participating in the COASTSPAN program, tag/recapture data from various tagging programs, and state fishery independent monitoring to generate the initial probability boundaries. NMFS then consulted with scientists familiar with the habitat requirements for the species to determine whether specific bays and estuaries should be included as EFH boundaries. NMFS also cross-checked the resulting probability boundaries with scientific data from peer-reviewed publications and collaborated with scientists to ensure the correct data were used and that appropriate areas were delineated. Finally, NMFS had an extended 90–day comment period for the DEIS during which all of the proposed boundaries were available for viewing in hard copy and electronic format, and on an interactive internet mapping site. NMFS received a number of comments during that period which further helped to determine whether specific estuaries should be included.

Comment 7: Does HMS EFH encompass the entire water column?

Response: Yes, at this point, HMS EFH is considered to encompass the entire water column. At some point in the future, NMFS may have the necessary data and technology to differentiate between different water depths utilized by HMS and further refine the exact habitat within the water column that is essential; however, NMFS does not yet have that capability. EFH from some species of sharks also includes benthic habitat in coastal areas for shark pupping and nursery grounds.

Comment 8: Do the lead weights used on deep sea trawls have an impact on HMS EFH?

Response: No, lead weights used on deep sea trawls do not have an impact on HMS EFH because HMS EFH does not include benthic habitat in deep sea areas. HMS EFH is instead defined by the water column and not benthic habitat.

Comment 9: Were the bottom longline vessel locations near the coral reefs collected with GPS or some other means? The locations may not be accurate depending on how the locations were obtained or recorded.

Response: Depending on the year, latitude and longitude coordinates may have been collected using either a Global Positioning System (GPS) or U.S. Coast Guard Long Range Aid to Navigation (LORAN-C). LORAN was used widely throughout the 1980s and early 1990s before most vessels began to switch to GPS. Since the data are from the mid 1990s it is possible that some data were collected by LORAN-C which may be subject to error.

Comment 10: Did NMFS use vessel trip reports or pelagic longline logbook data in the analysis?

Response: NMFS did not use vessel trip reports or pelagic longline logbook data because neither data set includes size information which is necessary to identify EFH by life stage as required by the EFH regulations.

Comment 11: The EFH mapper is great, loads quickly, and is a good way to present the data.

Response: NMFS received many favorable comments about the EFH mapping tool. NMFS considers the EFH mapper to be an effective way to make HMS EFH boundaries available to the public, state, and federal agencies that need to consider whether a proposed project may occur within EFH boundaries. The high resolution and detail that is available on the EFH mapper is far superior to static, hardcopy maps. By zooming in and out on specific coastal areas, it is possible for interested parties to determine the exact location of HMS EFH boundaries. This in turn will help applicants determine whether consultation may be required. In addition, the internet mapping site provides a cost-effective alternative to the high cost associated with printing color maps.

Comment 12: Will NMFS be able to provide the spatial EFH files to the public or interested parties?

Response: Yes, NMFS plans to continue using the EFH mapping site that was used during the DEIS comment period. In addition, maps and downloadable spatial EFH files for all federally managed species can be found on the NMFS EFH Mapper at *http://sharpfin.nmfs.noaa.gov/website/EFH_Mapper/map.aspx*. NMFS will continue to provided spatial Geographic Information System (GIS) EFH files to interested parties upon request. Even prior to development of the internet site, NMFS regularly provided spatial Geographic Information System (GIS) EFH files to interested parties upon request, and will continue to do so.

Comment 13: Did NMFS do a statistical analysis of whether there were sufficient points or adequate sample size to determine EFH based on presence/absence data? If not, at the least, NMFS should include the number of data points used for each of the species.

Response: NMFS did not perform a statistical analysis to determine whether there were sufficient data points to determine EFH, but did provide the number of data points used by data source for each species on the hardcopy maps in the FEIS. NMFS also included the number of data points represented by each species and life stage in the electronic PDF versions of the maps, but could not include them on the EFH internet mapping site.

Comment 14: Are there any plans to consider HAPCs for any other species?

Response: NMFS is not considering additional HAPCs at this time, however this does not preclude future HAPC designations.

Comment 15: NMFS should consider forage species as EFH.

Response: According to the Magnuson-Stevens Act, EFH is defined as areas necessary for spawning, breeding, feeding, and growth to maturity. As part of the analysis in determining EFH, NMFS considered areas that were important feeding areas and where prey species play an important role. However, NMFS is not required to designate EFH for a particular species based purely on the availability, or primary habitat of, prey species. Prey species are one component that is taken into consideration when determining EFH.

2. Habitat Areas of Particular Concern (HAPCs)

Comment 1: NMFS received numerous comments in support of the HAPC designation for BFT in the Gulf of Mexico including 1,035 letters from members of the Monterey Aquarium's Ocean Action Team.

Response: NMFS recognizes that HAPCs are intended to focus conservation efforts and bring heightened awareness to the ecological importance of special areas and their vulnerability to degradation through fishing and non-fishing activities. Designating the bluefin tuna spawning area in the Gulf of Mexico should highlight the importance of the area and foster added conservation measures to reduce impacts from these activities. By establishing the EFH provisions, the Magnuson-Stevens Act clearly recognized and acknowledged the importance of habitat in maintaining healthy fish stocks. The EFH provisions provide a tool by which NMFS has greater oversight of development activities that have the potential to impact EFH. Specifically, section 305(b)(1)(D) of the Magnuson-Stevens Act requires all Federal agencies to consult with the Secretary on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH.

Comment 2: We support designation of the HAPC for BFT in the Gulf of Mexico. Each of the criteria under the EFH HAPC guidelines is satisfied. Bluefin tuna spawning habitat in the Gulf of Mexico is vulnerable to a number of sources of human-induced degradation, including: 1) reduced availability of prey fish for feed should offshore aquaculture be developed (EFH guidelines identify actions that reduce the availability of major prey species as adverse effects on EFH); 2) expanded offshore oil drilling and liquefied natural gas development; 3) threats to sargassum habitat, which studies have found support larvae of BFT and other pelagic species; 4) and dead zones that potentially could pose a long-term threat to spawning success. The area designated for HAPC is in need of additional levels of protection from such adverse impacts.

Response: NMFS agrees that there are a number of activities that have the potential to impact EFH and HAPCs, not just in the Gulf of Mexico, but in all areas. The Gulf of Mexico Fishery Management Council (GMFMC) is currently developing an Aquaculture FPEIS. The purpose of the plan is to establish a regional permitting process to manage the development of an environmentally sound and economically sustainable aquaculture industry in federal waters of the Gulf of Mexico. Aquaculture projects for council managed species in federal waters of the Gulf of Mexico would need to be authorized and receive a permit from the GMFMC. Permit applicants would be required to conduct a baseline environmental assessment of the proposed site prior to permit review by NMFS. If a permit is authorized, permittees would have to conduct routine monitoring of a site based on NMFS protocols and procedures developed in coordination with other federal agencies. Aquaculture operations would also be required to report to NMFS within 24 hours of the discovery of: major escapement; entanglements or interactions with marine mammals, endangered species and migratory birds; and findings or suspected findings of pathogens. Other activities such as oil and gas development are subject to the consultation provisions under the Magnuson-Stevens Act. Section 305(b)(1)(D) of the Magnuson-Stevens Act requires all federal agencies to consult with the Secretary on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH.

Comment 3: Designating a HAPC for BFT populations will be a critically important step if it is to have any semblance at returning to viability. Other actions NMFS should take include: 1) developing an EIS for offshore aquaculture in federal waters; 2) reigning in permits for offshore aquaculture in federal waters; 3) reducing fishing for feedfish; and 4) designating the area identified as preferred alternative 2 as a HAPC.

Response: As discussed in the previous response, the GMFMC prepared a FPEIS for offshore aquaculture, which evaluates the potential environmental impacts of a range of alternatives and describes potential impacts to water quality, wild stocks, and fishing communities.

Potential impacts resulting from offshore aquaculture may include increased nutrient loading, habitat degradation, fish escapement, competition with wild stocks, entanglement of endangered or threatened species and migratory birds, spread of pathogens, user conflicts, economic and social impacts on domestic fisheries, and navigational hazards. The preferred alternatives selected by the Gulf Council are intended to prevent or mitigate to the extent practicable these potential adverse environmental impacts.

Comment 4: We believe that recent studies by Dr. Barbara Block of Stanford University indicate designation of the Atlantic BFT HAPC is necessary to prevent further depletion of the western population.

Response: In addition to Dr. Block's research, a number of other publications, studies, and data collected by NMFS as well as other state and Federal institutions, have highlighted the importance of the Gulf of Mexico for spawning BFT. Combined, all of these sources provide support for the designation of a HAPC for BFT in the Gulf of Mexico.

Comment 5: We support the designation of the BFT HAPC in the Gulf of Mexico, but recommend that the area be amended to include all waters west of 86 degrees West longitude and off the continental shelf (e.g., offshore of the 200 m contour) to the boundary of the U.S. EEZ, which is more scientifically accurate and is based on analyses of the combined electronic tagging and fishery data sets.

Response: Based on public comment, and further review of the data, NMFS has modified the HAPC boundary that was originally proposed in Draft Amendment 1 to follow the 100 meter (m) isobath west of 86 degrees West longitude in the Gulf of Mexico, and include all waters seaward of the 100m isobath to the EEZ boundary. NMFS believes that the changes to the boundary reflect the areas that are most important for BFT spawning in the Gulf of Mexico.

Comment 6: Why are there straight lines for the BFT HAPC in the Gulf of Mexico? Does NMFS have data to support a BFT HAPC in waters off western Louisiana? Spawning areas do not follow straight lines, and the northernmost portion should be moved further south. It would be better to follow existing contour lines.

Response: As described in the previous response, NMFS has modified the HAPC boundary to follow the 100m isobath in the Gulf of Mexico. Although straight lines are sometimes useful for management and enforcement purposes, NMFS agrees that in this case, the best representation of the HAPC boundary in the Gulf would be to follow existing contour lines to better reflect habitat useage by BFT.

Comment 7: Is using larval data as a proxy for adult BFT spawning areas appropriate?

Response: NMFS used a variety of data sources to establish the HAPC boundary for BFT spawning areas in the Gulf of Mexico. As described in the FEIS, a number of alternatives were proposed, including a non-preferred alternative of using the 95 percent probability boundary for BFT larval data collections to which the commenter is referring. Instead, NMFS preferred alternative 2 which relied on a number of data sources, one of which included BFT larval data collections.

Comment 8: We support NMFS preference of HAPC alternative 2 over Alternatives 3 and 4; alternative 3 is biased due to larval sampling stations, and alternative 4 does not capture the entire spawning ground.

Response: NMFS agrees that alternative 2 is the best alternative for designating a HAPC for BFT spawning areas in the Gulf of Mexico because it encompasses the most important areas where BFT spawning is occurring rather than the areas where BFT eggs and larvae may be dispersed.

Comment 9: We request that you remove the Teo et al. (2007) overlay from the HAPC maps, as it misrepresents the data, the layers are not digitized accurately, and including the data overemphasizes the location of 28 individuals displaying breeding behavior as compared to thousands of points from the observer program, logbooks, and electronic tagging.

Response: NMFS has removed the Teo et al. (2007) overlay from the HAPC maps in the FEIS. The original intent of including the area in the Draft Amendment was to demonstrate the importance of the western Gulf of Mexico as one of the key areas for BFT spawning, and to indicate that the HAPC preferred alternative would encompass portions of the area within the U.S. EEZ considered primary breeding areas in the Teo et al. (2007). publication.

Comment 10: I support the creation of a HAPC for BFT in the Gulf of Mexico; I think NMFS should put the entire area off limits to development, fishing, and oil drilling.

Response: Section 305(b)(1)(D) of the Magnuson-Stevens Act requires all federal agencies to consult with the Secretary on all actions or proposed actions authorized, funded, or undertaken by the agency that may adversely affect EFH. Sections 305(b)(3) and (4) direct the Secretary and the Councils to provide comments and EFH conservation recommendations to federal or state agencies on actions that affect EFH. Such recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH resulting from actions or proposed actions authorized, funded, or undertaken by the agency or the activities of other agencies such as the Army Corps of Engineers or Mineral Management Service for development or offshore drilling. Section 305(b)(4)(B) requires federal agencies to respond in writing to such comments. Although NMFS has the regulatory authority to minimize fishing activities that are demonstrated to have more than a minimal and not temporary effect on EFH, NMFS has not proposed, nor implemented any measures to minimize fishing impact on EFH in this FEIS because NMFS has determined that BFT EFH is in the water column and fishing is not having more than a minimal impact on water column properties. Further, the Department of Commerce does not have the legal authority to regulate oil drilling.

Comment 11: NMFS received a number of comments regarding the HAPC and fishing effort including: (1) I support the HAPC and recommend closure of the Gulf of Mexico and Atlantic to longlining of any type; (2) this type of fishing is non selective and is destroying the fish and other wildlife indiscriminately; (3) BFT spawning grounds in the Gulf of Mexico need to be closed to purse seine and longline commercial fishing during the breeding season; and 4) NMFS should consider a seasonal closure for pelagic longlining in the HAPC during the bluefin spawning season.

Response: The EFH guidelines require NMFS to identify fishing and non-fishing activities that may adversely affect EFH. Since most HMS EFH is comprised of the water column, of which the characteristics of temperature, salinity, and dissolved oxygen are unlikely to be affected by fishing gears, NMFS concluded that fishing gears were not having a negative effect on most HMS EFH. As a result, NMFS did not propose any measures to regulate fishing in association with EFH. NMFS has provided a list of conservation recommendations for fishing and non-fishing activities that have the potential to impact EFH in the FEIS. Since the focus of this amendment is EFH, NMFS did not consider any alternatives or regulatory measures to limit fishing effort in order to reduce

bycatch. Such an action would need to be considered in a separate rulemaking or amendment. The Consolidated HMS FMP did include measures to reduce bycatch. NMFS is continuing to monitor bycatch of BFT in the Gulf of Mexico, and has implemented 100 percent observer coverage on pelagic longline vessels during the spawning season. Although NMFS issues permits for tuna purse-seining, targeting of BFT in the Gulf of Mexico is prohibited and purse-seining for BFT, or any other HMS, is not authorized in the Gulf of Mexico.

Comment 12: Despite the clearly recognized importance of Gulf spawners, NMFS has allowed continued bycatch mortality of mature BFT on their spawning ground by the U.S. pelagic longline fleet. We hope that by deciding to focus future conservation efforts for BFT on the Gulf of Mexico, NMFS will take even more proactive steps towards protecting these spawners.

Response: Targeting BFT is prohibited in the Gulf of Mexico. Vessels are currently subject to target catch requirements in order to retain any incidentally caught BFT. As indicated in the previous response, NMFS has implemented 100 percent observer coverage in the Gulf of Mexico during BFT spawning season (April-June) during the previous two years and will have 100 percent observer coverage again this year. This information will help NMFS to better understand the scope of the bycatch, the areas most likely to result in incidental catch of BFT, and the temporal variability in bycatch.

Comment 13: NMFS has incorrectly stated that the HAPCs for sandbar sharks in the Chesapeake Bay as being in the State of Maryland. In actuality, the HAPCs were identified in waters of Virginia.

Response: The commenter is correct that the majority of the HAPC for sandbar sharks is in Virginia state waters; however a portion of the HAPC is also located in Maryland state waters. As a result, NMFS has amended the language in the FEIS to say that the HAPC for sandbar sharks occurs in both Maryland and Virginia state waters of the Chesapeake Bay.

3. Fishing and Non-Fishing Impacts on Essential Fish Habitat

Comment 1: NMFS states that if future analyses indicate certain fishing gears are having a more than minimal and not temporary effect on EFH, NMFS will propose alternatives to avoid or minimize those impacts in a subsequent rulemaking; in this regard, we note that Atlantic BFT are subject to indirect fishing pressure within the spawning grounds during the spawning season, in particular as bycatch in pelagic longline fisheries targeting other species.

Response: NMFS is aware of the incidental catch of BFT in the Gulf of Mexico and is continuing to monitor the situation in the Gulf of Mexico with 100 percent observer coverage on pelagic longline vessels during the spawning season. Since the focus of this amendment is habitat, NMFS did not consider any alternatives or regulatory measures to limit fishing effort in order to reduce bycatch. Such an action would need to be considered in a separate rulemaking or amendment, as appropriate.

Comment 2: We are concerned that NMFS' evaluation of the non-fishing threats to the proposed BFT HAPC in the Gulf of Mexico is incomplete - NMFS has completely failed to address the potential threat posed by seismic exploration activities associated with the expansion of oil and gas development in the Gulf.

Response: NMFS agrees that seismic exploration has the potential to affect habitat use by a number of species including HMS, and has therefore included conservation recommendations in the FEIS for seismic exploration activities associated with the expansion of oil and gas development in the Gulf of Mexico. During the normal course of consultation, habitat experts would review all available data to determine whether potentially harmful habitat effects had been adequately addressed prior to approval of any applications.

Comment 3: Additional information should be provided on how determinations will be made regarding impacts from fishing gear; further assurance should be given as to how any impacts will be addressed.

Response: Determination of impacts from fishing gears would be done in a manner similar to the analysis completed in the current Amendment for shark bottom longline gear. That is, NMFS would analyze the nature, scale, scope, duration, and frequency of impacts of fishing gears on specific habitat types and make a determination as to whether the impacts are considered more than minimal and not temporary in nature. If such an effect is demonstrated, then NMFS would propose measures to minimize those impacts. Impacts would be addressed on a case-by-case basis based on analysis of existing data.

Comment 4: The GMFMC is considering offshore aquaculture projects that should be considered a fishing impact, and could have an impact on BFT EFH.

Response: NMFS is aware of the Programmatic EIS for offshore aquaculture that the GMFMC is finalizing and has included a discussion of offshore aquaculture, including conservation recommendations, in the Final EIS.

Comment 5: Did the EFH analysis include fishing effort? If not, this could be why there is no EFH identified for adult swordfish off the southeast corner of Florida.

Response: NMFS provided a detailed description of the data and approach used to update EFH boundaries in Chapter 4 of the FEIS, including inherent limitations in certain data sets and why others were not included. To summarize, NMFS did not include fishing effort in the EFH analysis for a variety of reasons. Most of the presence/absence data available for HMS does not include fishing effort. Some of the data sets that do include fishing effort, such as the Pelagic Longline Logbook data, do not include the size information required to identify EFH by lifestage as required by the EFH regulations. Other data sets that include fishing effort, such as the Pelagic Observer Program (POP) data, comprise only a small proportion of the overall data available for pelagic species. Thus, relying on fishing effort from the POP data alone would have precluded the use of other datasets and would have reduced the potential range of EFH.

Comment 6: ''Dead zones'' due to hypoxia could pose a significant long-term threat to spawning success for BFT. NMFS should include additional information on the dead zone in the Gulf of Mexico and potential impacts on BFT EFH and the HAPC.

Response: NMFS is aware of dead zones due to hypoxia in the Gulf of Mexico. Dead zones typically occur in benthic or near-benthic environments where they would be unlikely to affect BFT habitat. NMFS has examined this issue in more detail and included a discussion on hypoxia in the Final EIS.

Comment 7: What would the process be if there is a proposed aquaculture project in the BFT HAPC? Would the project still be allowed to happen?

Response: The GMFMC regulates non-HMS fisheries, including aquaculture, in the U.S. Gulf of Mexico EEZ, which extends from state waters to 200 nautical miles offshore. Landings or possession of species managed under an FMP for purposes of commercial marine aquaculture production in the EEZ constitutes ''fishing'' as defined in the Magnuson-Stevens Act. Permit applicants would be required to conduct

a baseline environmental assessment of the proposed site prior to permit review by NMFS. If a permit is authorized, permittees would have to conduct routine monitoring of a site based on NMFS protocols and procedures developed in coordination with other federal agencies. Aquaculture operations would also be required to report to NMFS within 24 hours of the discovery of: major escapement; entanglements or interactions with marine mammals, endangered species and migratory birds; and findings or suspected findings of pathogens.

Comment 8: Has NMFS considered harmful algal blooms (HABs) in the non-fishing impacts section?

Response: While HABs are a concern for a number of species, in general they are less likely to affect habitat for HMS because HABs tend to occur closer to shore in areas where HMS are less likely to occur. In addition, given their highly mobile nature, HMS are more likely to avoid prolonged contact with HABs in affected areas. However, NMFS considers this an important issue and has included additional information on HABs in the non-fishing impact section of the FEIS.

Authority: 16 U.S.C. 1801 *et seq*.

Dated: June 9, 2009.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–13866 Filed 6–11–09; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XP78

Pacific Fishery Management Council; Public Meeting/Workshop

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of three public meetings.

SUMMARY: Three Groundfish Stock Assessment Review (STAR) Panel meetings will be held to review new assessments for groundfish species. The first STAR Panel meeting will review new assessments for bocaccio and widow rockfish. The second STAR Panel meeting will review new assessments for lingcod and cabezon. The third STAR Panel meeting will review new assessments for yelloweye and greenstriped rockfish. All three STAR Panel meetings are work sessions which are open to the public.

DATES: The bocaccio and widow rockfish STAR Panel meeting will be held beginning at 8:30 a.m., Monday, July 13, 2009. The meeting will continue on Tuesday, July 14, 2009 beginning at 8:30 a.m. through Friday, July 17, 2009. The meeting will end at 5:30 p.m. each day, or as necessary to complete business.

The lingcod and cabezon STAR Panel meeting will be held beginning at 8:30 a.m., Monday, July 27, 2009. The meeting will continue on Tuesday, July 28, 2009 beginning at 8:30 a.m. through Friday, July 31, 2009. The meeting will end at 5:30 p.m. each day, or as necessary to complete business.

The yelloweye and greenstriped rockfish STAR Panel meeting will be held beginning at 8:30 a.m., Monday, August 3, 2009. The meeting will continue on Tuesday, August 4, 2009 beginning at 8:30 a.m. through Friday, August 7, 2009. The meeting will end at 5:30 p.m. each day, or as necessary to complete business.

ADDRESSES: The bocaccio and widow rockfish STAR Panel meeting will be held at the NMFS Southwest Fisheries Science Center, Meeting Room 188, 110 Shaffer Road, Santa Cruz, CA 95060; telephone: (831) 420–3900.

The lingcod and cabezon STAR Panel meeting, as well as the yelloweye and greenstriped rockfish STAR Panel meeting, will be held at the Hotel Deca, 4507 Brooklyn Avenue N.E., Seattle WA 98105; telephone: 1–800–899–0251.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, Northwest Fisheries Science Center (NWFSC); telephone: (206) 437–5670; or Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the three STAR Panel meetings is to review draft stock assessment documents for these species and any other pertinent information, work with the Stock Assessment Teams to make necessary revisions, and produce STAR Panel reports for use by the Council family and other interested persons. No management actions will be decided by these STAR Panels. The STAR Panels' role will be development of recommendations and reports for consideration by the Council at its September meeting in Foster City, CA.

Although non-emergency issues not contained in the meeting agendas may come before the STAR Panel participants for discussion, those issues may not be the subject of formal STAR Panel action during these meetings. STAR Panel action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the STAR Panel participants' 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 Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: June 9, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–13839 Filed 6–11–09; 8:45 am]

BILLING CODE S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN: 0648–XP77

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) will hold a meeting to initiate planning and make assignments for developing an overfishing review for Queets River and Strait of Juan de Fuca natural coho. STT meeting to be held June 30, 2009 to plan development of an assessment of the causes and implications of Queets River and Strait of Juan de Fuca natural coho stocks failing to meet their conservation objective for three consecutive years. This meeting of the STT is open to the public.

DATES: The meeting will be held Tuesday, June 30, 2009, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Washington Department of Fish and Wildlife office, located in the Natural Resources Building at 1111 Washington

St. S.E., Room 682, Olympia, WA 98501–1091.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop a set of topics and assignments to assess the spawning escapement shortfalls for natural coho stocks from the Queets River in 2006–08, and from the Strait of Juan de Fuca in 2005–08. The assessment will focus on the role of fishing on the spawning escapement shortfall and on the implication to long-term productivity of the stocks of not meeting their conservation objectives.

When a salmon stock managed by the Council fails to meet its conservation objective for three consecutive years, an overfishing concern is triggered according to the terms of the Pacific Coast Salmon Plan (Salmon Plan). The Salmon Plan requires the Council to direct its STT to undertake a review of the status of the stock in question and determine if excessive harvest was responsible for the shortfall, if other factors were involved, and the significance of the stock depression with regard to achieving maximum sustainable yield.

Although non-emergency issues not contained in the meeting agenda may come before the STT for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: June 9, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–13838 Filed 6–11–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures 94th Annual Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Meeting notice.

SUMMARY: The Annual Meeting of the 94th National Conference on Weights and Measures, Incorporated (NCWM) will be held July 12 to 16, 2009, in San Antonio, Texas. Publication of this notice on the NCWM's behalf is undertaken as a public service; NIST does not endorse, approve, or recommend any of the proposals contained in this notice or in the publications of the NCWM mentioned below. The meetings are open to the public but registration is required. Registration information is stated in the **FOR FURTHER INFORMATION CONTACT** section below.

DATES: The meeting will be held on July 12–16, 2009.

ADDRESSES: The meeting will be held at the Marriott Plaza, 555 S. Alamo Street, San Antonio, Texas.

FOR FURTHER INFORMATION CONTACT: Carol Hockert, Chief, NIST, Weights and Measures Division, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600 or by telephone (301) 975–5507 or at *Carol.Hockert@nist.gov*. Please see the NCWM Publication 16, which contains detailed meeting agendas and registration information at *http://www.ncwm.net* on the Internet.

SUPPLEMENTARY INFORMATION: The NCWM is an organization of weights and measures officials of the States, counties, and cities of the United States, Federal agencies, and private sector representatives. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration, and enforcement. NIST participates to promote uniformity among the States in laws, regulations, methods, and testing equipment that comprise the regulatory control of commercial weighing and measuring devices and other practices used in trade and commerce.

The following are brief descriptions of some of the agenda items that will be considered along with other issues at the meeting. Comments will be taken on these and other issues during public comment sessions and many items will be considered for NCWM adoption. At this stage, the items are proposals. The Committees may also accept comments and where they will finalize recommendations for NCWM consideration and possible adoption during its voting sessions on July 15 or 16, 2009. The Committees may withdraw or carry over items that need additional development.

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices (NIST Handbook 44).'' Those items address weighing and measuring devices used in commercial applications, that is, devices that are normally used to buy from or sell to the public or used for determining the quantity of product sold among businesses.

Issues on the agenda of the NCWM Laws and Regulations Committee (L&R Committee) relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the area of legal metrology and engine fuel quality'' and NIST Handbook 133 ''Checking the Net Contents of Packaged Goods.''

This notice contains information about significant items on the NCWM Committee agendas, but does not include all agenda items. As a result, the following items are not consecutively numbered. A copy of the complete agenda along with detailed background information is available at *http://www.ncwm.net/events/index.cfm?fuseaction=meeting_archives.*

Specifications and Tolerances Committee

The following items are proposals to amend NIST Handbook 44:

Scales Code

Item 320–1A and B—the S&T Committee is recommending adoption of several amendments to the current specifications for the mechanisms used on scales to set zero and tare values. Revisions to the definition for a tare mechanism are also proposed for the purpose of clarifying the requirements and increasing uniformity in their application.

Liquid-Measuring Devices Code

Item 330–1—Temperature Compensation for Liquid-Measuring Devices Code: This is not a voting item at this meeting but the S&T Committee will accept comments on a proposal to add provisions to Handbook 44 to allow retail motor fuel dispensers to be equipped with the automatic means to deliver product with the volume

adjusted to a reference temperature. (*See also* Item 232 under the L&R Committee which is presented below.)

Item 336—Water Meters: The S&T Committee has recommended adoption of Item 336–1, which includes proposed amendments to specifications related to the design of water meters and will accept comments on other proposals under this section that address meter repeatability, test procedures, and drafts (*i.e.,* the volumes used in testing and number of measurements made during an examination of a meter).

The Laws and Regulations Committee

The following items are proposals to amend NIST Handbook 130:

Method of Sale of Commodities Regulation

Item 232—Automatic Temperature Compensation (ATC)

The L&R Committee will offer two ATC proposals for adoption. Both proposals require consumers to be notified that the fuel quantity is being temperature compensated so they can make value comparisons between sellers, and it will impose other controls on the use of ATC by sellers.

Item 232–1 would allow the voluntary use of automatic temperature compensation in the sales of engine fuels at retail and other levels of trade beginning January 1, 2010, but will require all fuels to be sold, offered, or exposed for sale on a temperature compensated basis by January 1, 2020.

Item 232–2 would allow sellers to use automatic temperature compensation in sales of engine fuels at retail and other levels of trade on a voluntary basis beginning January 1, 2010, but does not include a requirement that all fuels be sold, offered, or exposed for sale on a temperature compensated basis by any deadline.

Note: If Item 232–1 is adopted by the NCWM Item 232–2 will be withdrawn. However, if Item 232–1 is not adopted by the NCWM, the committee will present Item 232–2 to the NCWM for consideration.

Item 232–3—Wood Flavoring Chips: The L&R Committee is recommending adoption of an amendment to the current method of sale regulation on flavoring chips by adding guidance on the appropriate units of measure to be used on small packages.

Item 270–4—Method of Sale and Engine Fuel Quality Requirements for Hydrogen: The L&R Committee will accept comments on a proposal to establish a uniform method of sale and quality standards for hydrogen when it is offered for sale at the retail level as a vehicle fuel.

The following item is a proposal to amend NIST Handbook 133:

Item 260–1—The L&R Committee will consider several revisions to NIST Handbook 133 ''Checking the Net Contents of Packaged Goods'' to provide guidance for making allowances for moisture loss from packaged goods and to notify inspectors not to use the wet tare test procedures when verifying the net quantity of contents of packages of meat and poultry that bear a seal of inspection from the U.S. Department of Agriculture (USDA) Food Safety and Inspection Service. The provision regarding wet tare is needed because USDA adopted, except for the wet tare procedure and other handbook sections not relevant to meat and poultry products, the 4th Edition of the Handbook 133 in September 2008. Other amendments have been proposed that will correct errors and omissions that have been identified since NIST Handbook 133 was last published in 2005.

Dated: June 4, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–13869 Filed 6–11–09; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

DATES: *Effective Date:* July 13, 2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Lou Bartalot, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On 4/10/2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (74 FR 68, pgs. 16367–16368) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Mailroom Operation: Von Braun Buildings 2 and 3, 5222 Martin Road, Redstone Arsenal, AL; MDA, Federal Office Building 2, 7100 Defense Pentagon, Washington, DC; Dahlgren NSWC, 17211 Avenue D, Dahlgren, VA.
NPA: Huntsville Rehabilitation Foundation, Huntsville, AL.
Contracting Activity: Missile Defense Agency (MDA), Redstone Arsenal, AL.
Service Type/Location: Latrine Services, Rental and Maintenance: 62 CONS/CC, 100 Main St., McChord Air Force Base, WA.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Dept Of The Army, XR W6BA ACA Ft Lewis, WA.
Service Type/Location: Laundry Services: Marine Corps Logistics Base, 814 Radford Blvd., Albany, GA.
NPA: Wiregrass Rehabilitation Center, Inc., Dothan, AL.
Contracting Activity: Dept Of The Navy, Commander, Albany, GA.

Deletions

On 3/27 and 4/10/2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (74 FR 58, pgs. 13413–13414 and 74 FR 68, pgs. 16367–16369, respectively) of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

PCU, Level 1 Boxer

NSN: 8420–01–542–5494—Size S;
NSN: 8420–01–542–5495—Size M;
NSN: 8420–01–542–5496—Size L;
NSN: 8420–01–542–5497—Size LL;
NSN: 8420–01–542–5499—Size XL;
NSN: 8420–01–542–5500—Size XLL;
NSN: 8420–01–542–5491—Size XS;
NSN: 8420–01–543–7068—Size ML;
NSN: 8420–01–542–5478—Size XXL;
NSN: 8420–01–542–5490—Size XXLL;
NSN: 8420–01–542–5485—Size XXXL;
NSN: 8420–01–542–5488—Size XXXLL.
NPA: Southeastern Kentucky Rehabilitation Industries, Inc., Corbin, KY.
Contracting Activity: XR W2DF RDECOM ACQ CTR NATICK, Natick, MA & Washington, DC.

Services

Service Type/Location: Custodial Services: VA Primary Care Center, North Pinellas Park, St. Petersburg, Marion City, Naples & Sarasota, Multiple Locations, FL.
NPA: Abilities, Inc. of Florida, Clearwater, FL.
Contracting Activity: Department Of Veterans Affairs, St. Petersburg, FL.
Service Type/Location: Shelf Stocking, Custodial & Warehousing: Key West Naval Air Station, Key West, FL.
NPA: Unknown (No Providing Agency).
Contracting Activity: Defense Commissary Agency (DECA).

Lou Bartalot,

Director, Compliance.

[FR Doc. E9–13886 Filed 6–11–09; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed addition to the procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by the nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Comments Must be Received on or Before:* 7/13/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed addition, the entities of the Federal Government identified in this notice for each service will be required to procure the service listed below from nonprofit agency employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agency listed:

Services

Service Type/Locations: Consolidated Base Operation Support (BOS).
Naval & Marine Corps Reserve Center, 1600 Lafayette Ave., Moundsville, WV;
Naval Reserve Center, 1200 Navy Way Road Avoca, PA;
Naval & Marine Corps Reserve Center, 3938 Old French Road Erie, PA;
Naval & Marine Corps Reserve Center Lehigh Valley, PA, 1400 Postal Drive, Allentown, PA;
Naval & Marine Corps Reserve Center, 261 Industrial Park Road Ebensburg, PA;
Naval & Marine Corps Reserve Center Pittsburgh, PA, 625 East Pittsburgh McKeesport Blvd., North Versailles, PA;
Marine Corps Reserve Center, 615 Kenhorst Boulevard Reading, PA;
Naval & Marine Corps Reserve Center, 3920 Kirkwood Highway Wilmington, DE.
NPA: Human Technologies Corporation, Utica, NY.
Contracting Activity: Dept of the Navy, U.S. Fleet Forces Command, Norfolk, VA.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–13802 Filed 6–11–09; 8:45 am]

BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Notice of Intent, Pursuant to the Authority in Section 2(h)(7) of the Commodity Exchange Act and Commission Rule 36.3(c)(3), To Undertake a Determination Whether the Henry Financial LD1 Fixed Price Contract Traded on the IntercontinentalExchange, Inc., Performs a Significant Price Discovery Function

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of action and request for comment.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is undertaking a review to determine whether the Henry Financial LD1 Fixed Price contract traded on the IntercontinentalExchange, Inc. (ICE), an exempt commercial market (''ECM'') under sections 2(h)(3)–(5) of the Commodity Exchange Act (''CEA'' or the ''Act''), performs a significant price discovery function. The Commission is undertaking this review based upon its evaluation of information provided by the ICE, as well as a Commission report on ECMs. Authority for this action is found in section 2(h)(7) of the CEA and Commission rule 36.3(c) promulgated thereunder. In connection with this evaluation, the Commission invites comment from interested parties.

DATES: Comments must be received on or before July 13, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- Follow the instructions for submitting comments. *Federal eRulemaking Portal: http://www.regulations.gov*.
- *E-mail: secretary@cftc.gov.* Include ICE Henry Financial LD1 Fixed Price Contract in the subject line of the message.
- *Fax:* (202) 418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/*.

FOR FURTHER INFORMATION CONTACT: Gregory K. Price, Industry Economist, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5515. E-mail: *gprice@cftc.gov*; or Susan Nathan, Senior Special Counsel, Division of Market Oversight, same address. Telephone: (202) 418–5133. E-mail: *snathan@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 16, 2009, the CFTC promulgated final rules implementing provisions of the CFTC Reauthorization Act of 2008 (''Reauthorization Act'') [1] which subjects ECMs with significant price discovery contracts (''SPDCs'') to self-regulatory and reporting requirements, as well as certain Commission oversight authorities, with respect to those contracts. Among other things, these rules and rule amendments revise the information-submission requirements applicable to ECMs, establish procedures and standards by which the Commission will determine whether an ECM contract performs a significant price discovery function, and provide guidance with respect to compliance with nine statutory core principles applicable to ECMs with SPDCs. These rules became effective on April 22, 2009.

In determining whether an ECM's contract is or is not a SPDC, the Commission will consider the contract's material liquidity, price linkage to other contracts, potential for arbitrage with other contracts traded on designated contract markets or derivatives transaction execution facilities, use of the ECM contract's prices to execute or settle other transactions, and other factors.

In order to facilitate the Commission's identification of possible SPDCs, Commission rule 36.3(c)(2) requires that an ECM operating in reliance on section 2(h)(3) promptly notify the Commission and provide supporting information or data concerning any contract: (i) That averaged five trades per day or more over the most recent calendar quarter; and (ii) (A) for which the ECM sells price information regarding the contract to market participants or industry publications; or (B) whose daily closing or settlement prices on 95 percent or more of the days in the most recent quarter were within 2.5 percent of the contemporaneously determined closing, settlement or other daily price of another agreement.

II. Determination of a SPDC

A. The SPDC Determination Process

Commission rule 36.3(c)(3) establishes the procedures by which the Commission makes and announces its determination on whether a specific ECM contract serves a significant price discovery function. Under those procedures, the Commission will publish a notice in the **Federal Register** that it intends to undertake a determination as to whether the specified agreement, contract, or transaction performs a significant price discovery function and to receive written data, views, and arguments relevant to its determination from the ECM and other interested persons.[2] After prompt consideration of all relevant information, the Commission will, within a reasonable period of time after the close of the comment period, issue an order explaining its determination. Following the issuance of an order by the Commission that the ECM executes or trades an agreement, contract, or transaction that performs a significant price discovery function, the ECM must demonstrate, with respect to that agreement, contract, or transaction, compliance with the core principles under section 2(h)(7)(C) of the CEA [3] and the applicable provisions of part 36. If the Commission's order represents the first time it has determined that one of the ECM's contracts performs a significant price discovery function, the ECM must submit a written demonstration of its compliance with the core principles within 90 calendar days of the date of the Commission's order. For each subsequent determination by the Commission that the ECM has an additional SPDC, the ECM must submit a written demonstration of its compliance with the core principles within 30 calendar days of the Commission's order.

B. ICE's Henry Financial LD1 Fixed Price Contract

The ICE Henry Financial LD1 Fixed Price contract is cash settled based on the final settlement price of the New York Mercantile Exchange's (NYMEX's) physically-delivered Henry Hub-based Natural Gas futures contract for the corresponding contract month. [4] The trading unit of the ICE Henry Financial LD1 Fixed Price contract is 2,500 mmBtu multiplied by the number of calendar days in the contract month. For example, if a contract month has 30 days, the trading unit is 75,000 mmBtu, which is referred to as 30 lots.

Based upon a required quarterly notification filed on April 30, 2009 (mandatory under Rule 36.3(c)(2)), the subject contract realized more than an average of five trades per day during the first quarter of 2009. In addition, the average volume of natural gas traded each business day over that period was 449,010 contracts, and the open interest in the contract as of March 31, 2009, was 2,932,798 contracts.

[1] 74 FR 12178 (Mar. 23, 2009); these rules became effective on April 22, 2009.

[2] The Commission may commence this process on its own initiative or on the basis of information provided to it by an ECM pursuant to the notification provisions of Commission rule 36.3(c)(2).

[3] 7 U.S.C. 2(h)(7)(C).

[4] The NYMEX is a designated contract market that offers futures and option contracts on a wide range of energy products, including crude oil, refined petroleum products, and natural gas.

It appears that the ICE Henry Financial LD1 Fixed Price contract may satisfy the material liquidity, price linkage, and arbitrage criteria for SPDC determination. With regard to material liquidity, the high average daily trading volume indicates that the subject contract is relatively liquid. With respect to the price linkage and arbitrage tests, it is noted above that the ICE Henry Financial LD1 Fixed Price contract and the NYMEX's physically-delivered Natural Gas futures contract have the same final settlement prices. Moreover, ICE uses the NYMEX's forward settlement curve when conducting its mark-to-market accounting procedures to settle the subject contract on daily basis. An October 2007 CFTC publication entitled *Report on the Oversight of Trading on Regulated Futures Exchanges and Exempt Commercial Markets* (''ECM Study'') stated that traders and voice brokers view the subject ICE contract as economically equivalent to the NYMEX physically-delivered Natural Gas futures contract. [5] The ICE and NYMEX contracts essentially comprise a single market for natural gas derivatives trading, and traders look to both the ICE and to the NYMEX when determining where to execute a trade at the best price. The ECM Study also stated that the ICE natural gas contract acts as price discovery market. To this end, the ECM Study referenced an analysis [6] of whether the NYMEX, ICE, or both facilities exhibit price leadership with respect to their natural gas contracts. If a particular exchange's prices lead those on another exchange, then the former exchange's contract is thought of as a price discovery market. In 2006, the ICE's natural gas contract exhibited price leadership on 20 percent of the contract days; the NYMEX's physically-delivered natural gas contract, on the other hand, exhibited price leadership on 63 percent of the contract days. Based on these factors, the ECM Study concluded that the ICE and the NYMEX contracts are both price discovery venues for natural gas trading.

III. Request for Comment

In evaluating whether an ECM's agreement, contract, or transaction performs a significant price discovery function, section 2(h)(7) of the CEA directs the Commission to consider, as appropriate, four specific criteria: Price linkage, arbitrage, material price reference, and material liquidity. As it explained in Appendix A to the part 36 rules, the Commission, in making SPDC determinations, will apply and weigh each factor, as appropriate, to the specific contract and circumstances under consideration. In addition, as part of its evaluation, the Commission will consider the written data, views, and arguments from the ECM that lists the potential SPDC and from any other interested parties.

The Commission requests comment on whether the ICE's Henry Financial LD1 Fixed Price contract performs a significant price discovery function. Commenters' attention is directed particularly to Appendix A of the Commission's part 36 rules for a detailed discussion of the factors relevant to SPDC determination. The Commission notes that comments which analyze the contract in terms of these factors will be especially helpful to the determination process. In order to determine the relevance of comments received, the Commission requests that commenters explain in what capacity are they knowledgeable about the Henry Financial LD1 Fixed Price contract.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [7] imposes certain requirements on Federal agencies, including the Commission, in connection with their conducting or sponsoring any collection of information, as defined by the PRA. Certain provisions of final Commission rule 36.3 impose new regulatory and reporting requirements on ECMs, resulting in information collection requirements within the meaning of the PRA; OMB previously has approved and assigned OMB control number 3038–0060 to this collection of information.

B. Cost-Benefit Analysis

Section 15(a) of the CEA [8] requires the Commission to consider the costs and benefits of its actions before issuing an order under the Act. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs; rather, it requires that the Commission ''consider'' the costs and benefits of its action. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.

The bulk of the costs imposed by the requirements of Commission Rule 36.3 relate to significant and increased information-submission and reporting requirements adopted in response to the Reauthorization Act's directive that the Commission take an active role in determining whether contracts listed by ECMs qualify as SPDCs. The enhanced requirements for ECMs will permit the Commission to acquire the information it needs to discharge its newly mandated responsibilities and to ensure that ECMs with SPDCs are identified as entities with the elevated status of registered entity under the CEA and are in compliance with the statutory terms of the core principles of section 2(h)(7)(C) of the Act. The primary benefit to the public is to enable the Commission to discharge its statutory obligation to monitor for the presence of SPDCs and extend its oversight to the trading of SPDCs.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') [9] requires that agencies consider the impact of their rules on small businesses. The requirements of part 36 affect exempt commercial markets. The Commission previously has determined that exempt commercial markets are not small entities for purposes of the RFA.[10] Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that this Order, taken in connection with the part 36 rules, will not have a significant economic impact on a substantial number of small entities.

Issued in Washington, DC on June 9, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–13871 Filed 6–11–09; 8:45 am]

BILLING CODE 6351–01–P

[5] *http://www.cftc.gov/stellent/groups/public/@newsroom/documents/file/pr5403-07_ecmreport.pdf.*)

[6] ECM Study at 11.

[7] 44 U.S.C. 3507(d).

[8] 7 U.S.C.19(a).

[9] 5 U.S.C. 601 *et seq.*

[10] 66 FR 42256, 42268 (Aug. 10, 2001).

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 09–C0019]

Mattel, Inc. and Fisher-Price, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Mattel, Inc. and Fisher-Price, Inc., containing a civil penalty of $2,300,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by June 29, 2009.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 09–C0019, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: M. Reza Malihi, Trial Attorney, Division of Compliance, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7733.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: June 9, 2009.

Todd A. Stevenson,

Secretary.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Mattel, Inc. (''Mattel'') and Fisher-Price, Inc. (''Fisher-Price'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''CPSC'' or the ''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2089 (''CPSA'').

3. Mattel is a corporation organized and existing under the laws of the state of Delaware, with principal offices located in El Segundo, California. Fisher-Price, a wholly-owned subsidiary of Mattel, is a corporation organized and existing under the laws of the state of Delaware, with principal offices located in East Aurora, New York. At all times relevant hereto, Mattel and Fisher-Price (collectively, the ''Firms'') designed, imported and sold toys and children's products.

Staff Allegations Regarding Mattel

4. Between January 19, 2007 and July 27, 2007, Mattel imported into the United States approximately 253,000 units of ''Sarge'' die cast toy cars with markings of ''China'' and a ''7EA'' date code on the bottom (''Toy Cars''). Mattel shipped the Toy Cars to retailers from May 2007 to August 2007, and, in turn, they were sold to consumers at retail stores nationwide during that period for between $7 and $20 per unit.

5. Between September 30, 2006 and August 20, 2007, Mattel imported into the United States approximately 633,000 units of Barbie® accessory toys consisting of the following models: Barbie Dream Puppy House Playset; Barbie Dream Kitty Condo Playset; Barbie Table & Chairs Kitchen Playset; Barbie Bathtub & Toilet Bathroom Playset; Barbie Living Room Playset; Barbie Desk & Chair Bedroom Playset; and Barbie Couch & Table Living Room Playset (collectively, ''Accessory Toys''). Mattel shipped 439,000 of the Accessory Toys to retailers during that period, and, in turn, they were sold to consumers at retail stores nationwide from October 2006 to August 2007 for about $10 per unit.

6. The Toy Cars and the Accessory Toys (collectively, ''Mattel Products'') are ''consumer product(s),'' and, at all times relevant hereto, Mattel was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(3), (5), (8), and (11), 15 U.S.C. 2052(a)(3), (5), (8), and (11).

7. The Mattel Products are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 CFR Part 1303 (the ''Lead Paint Ban''). Under the Lead Paint Ban, toys and other children's articles must not bear ''lead-containing paint,'' defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 CFR 1303.2(b)(1).

8. During the summer of 2007, samples of the Mattel Products were tested for the presence of lead pursuant to the Lead Paint Ban. The test results demonstrated that certain samples of each of the Mattel Products contained levels of lead in excess of the permissible 0.06 percent limit set forth in the Lead Paint Ban.

9. On August 14, 2007, the Commission and Mattel announced a recall of the Toy Cars because ''[s]urface paints on the toys could contain levels of lead in excess of federal standards.'' Similarly, on September 4, 2007, the Commission and Mattel announced a recall of the Accessory Toys because ''[s]urface paints on the toys contain excessive levels of lead which is prohibited under federal law.'' At the time of each of the aforementioned recalls Mattel reported no incidents or injuries associated with the Mattel Products and excessive lead. Lead is toxic if ingested by young children and can cause adverse health consequences.

10. Mattel failed to ensure that the Mattel Products complied with the Lead Paint Ban.

11. The Mattel Products constitute ''banned hazardous products'' under CPSA section 8 and the Lead Paint Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

12. Between September 2006 and August 2007, Mattel sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the Mattel Products, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1). Mattel committed these prohibited acts ''knowingly,'' as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

13. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Mattel is subject to civil penalties for the aforementioned violations.

Staff Allegations Regarding Fisher-Price

14. Between April 19, 2007 and July 6, 2007, Fisher-Price imported approximately 967,000 units of various ''Sesame Street,'' ''Dora the Explorer,'' and other licensed character toys, comprising 83 different models (collectively, ''Licensed Character Toys''). Fisher-Price shipped about 678,000 of the Licensed Character Toys to retailers from May 2007 to August 2007 and, in turn, they were sold to consumers at retail stores nationwide during that period for between $5 and $40 per unit.

15. Between May 19, 2007 and August 1, 2007, Fisher-Price imported into the United States approximately 8,900 units of Big Big World 6-in-1 Bongo Band toys (''Bongo Band Toys''). Fisher-Price

shipped the Bongo Band Toys to retailers from May 2007 to August 2007, and, in turn, they were sold to consumers at retail stores nationwide from July 2007 to August 2007 for about $20 per unit.

16. Between July 31, 2006 and September 4, 2006, Fisher-Price imported into the United States approximately 3,000 units of GEOTRAX Freightway Transport locomotive toys and 80,000 units of GEOTRAX Special Track Pack locomotive toys (collectively, ''GEOTRAX Toys''). Fisher-Price shipped the GEOTRAX Toys to retailers from August 2006 to July 2007, and in turn, they were sold to consumers at retail stores nationwide from September 2006 to August 2007 for between $3 and $16 per unit.

17. Between May 17, 2007 and August 11, 2007, Fisher-Price imported into the United States approximately 37,500 units of Go Diego Go Animal Rescue Boat toys (''Boat Toys''). Fisher-Price shipped the Boat Toys to retailers during that period, and in turn, they were sold to consumers at retail stores nationwide from June 2007 through October 2007 for about $20 per unit.

18. The Licensed Character Toys, Bongo Band Toys, GEOTRAX Toys, and Boat Toys (collectively, ''Fisher-Price Products'') are ''consumer product(s),'' and, at all times relevant hereto, Fisher-Price was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(3), (5), (8), and (11), 15 U.S.C. 2052(a)(3), (5), (8), and (11).

19. The Fisher-Price Products are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Lead Paint Ban.

20. During the summer and fall of 2007, samples of the Fisher-Price Products were tested for the presence of lead pursuant to the Lead Paint Ban. The test results demonstrated that certain samples of each of the Fisher-Price Products contained levels of lead in excess of the permissible 0.06 percent limit set forth in the Lead Paint Ban.

21. On August 2, 2007, the Commission and Fisher-Price announced the recall of the Licensed Character Toys because ''[s]urface paints on the toys could contain excessive levels of lead.'' Similarly, on September 4, 2007, a recall was announced regarding the Bongo Band Toys and the GEOTRAX Toys, because surface paints on the toys contain levels of lead in excess of the permissible 0.06 percent limit set forth in the Lead Paint Ban. This was followed by the October 25, 2007 announcement of a recall of the Boat Toys because ''[s]urface paints on the toys contain excessive levels of lead, which violates the federal standard prohibiting lead paint on children's toys.'' At the time of each of the aforementioned recalls Fisher-Price reported no incidents or injuries associated with the Fisher-Price Products. Lead is toxic if ingested by young children and can cause adverse health consequences.

22. Fisher-Price failed to ensure that the Fisher-Price Products complied with the Lead Paint Ban.

23. The Fisher-Price Products constitute ''banned hazardous products'' under CPSA section 8 and the Lead Paint Ban, 15 U.S.C. 2057 and 16 CFR 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

24. Between July 2006 and August 2007, Fisher-Price sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the Fisher-Price Products, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. 2068(a)(1). Fisher-Price committed these prohibited acts ''knowingly,'' as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d).

25. Pursuant to section 20 of the CPSA, 15 U.S.C. 2069, Fisher-Price is subject to civil penalties for the aforementioned violations.

The Firms' Response

26. Mattel denies the Staff's allegations set forth above that it knowingly violated the CPSA.

27. Fisher-Price denies the Staff's allegations set forth above that it knowingly violated the CPSA.

Agreement of the Parties

28. Under the CPSA, the Commission has jurisdiction over this matter and over the Firms.

29. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by the Firms, or a determination by the Commission, that either of the Firms knowingly violated the CPSA.

30. In settlement of the Staff's allegations, Mattel shall pay, for and on behalf of both Firms, a civil penalty in the total amount of two million three hundred thousand dollars ($2,300,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. This payment shall be made by check payable to the order of the United States Treasury.

31. The Commission will not seek civil penalties for possible violations of sections 19(a)(1) and 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(1) and (4), regarding any information as to which the Firms, between March 1, 2007 and January 28, 2009, have adequately informed the CPSC (i) by submitting a Full Report under CPSA section 15(b), 15 U.S.C. 2064(b), and 16 CFR 1115.13(d), and/or (ii) by submitting complete information voluntarily by agreement with the Office of Compliance and Field Operations during said period. The Commission's agreement not to seek penalties will not relieve the Firms from the continuing duty to report to CPSC any new, additional or different information as required by CPSA section 15(b), 15 U.S.C. 2064(b) and the regulations at 16 CFR Part 1115. Regarding any information adequately and timely reported to CPSC by the Firms after January 28, 2009, whether submitted by agreement or otherwise, the Firms remain potentially liable for possible violations of section 19(a) of the CPSA, 15 U.S.C. 2068(a), other than subsection 19(a)(4), 15 U.S.C. 2068(a)(4). Except as expressly provided herein, nothing in this Agreement is intended nor may be construed to preclude, limit, or otherwise reduce the Firms' potential liabilities under any and all applicable laws, statutory provisions, regulations, rules, standards, and/or bans enforced or administered by CPSC.

32. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the **Federal Register**.

33. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, the Firms knowingly, voluntarily, and completely waive any rights they may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether the Firms failed to comply with the CPSA and its underlying

regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

34. The Commission may publicize the terms of the Agreement and Order.

35. The Agreement and Order shall apply to, and be binding upon, the Firms and each of their successors and assigns.

36. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject those referenced in paragraph 35 to appropriate legal action.

37. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

38. If any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and the Firms agree that severing the provision materially affects the purpose of the Agreement and Order.

Mattel, Inc.

Dated: 5–28–09
By:
Robert Normile
Senior Vice President, General Counsel and Secretary
Mattel, Inc.

Fisher-Price, Inc.

Dated: 5–28–09
By:
Robert Normile
Senior Vice President and Secretary
Fisher-Price, Inc.

Dated: 5–28–09
By:
Neil A. Goldberg, Esq.
Goldberg Segalla LLP.
665 Main Street, Suite 400, Buffalo, New York 14203
Counsel for Mattel, Inc. and for Fisher-Price, Inc.

U.S. Consumer Product Safety Commission Staff

Cheryl A. Falvey
General Counsel
Office of the General Counsel

Dated: 5–29–09
By:
Ronald G. Yelenik
Assistant General Counsel
Office of the General Counsel

Dated: 5–29–09
By:
M. Reza Malihi
Trial Attorney
Division of Compliance
Office of the General Counsel

Order

Upon consideration of the Settlement Agreement entered into between Mattel, Inc. (''Mattel'') and Fisher-Price, Inc. (collectively referred to as the ''Firms''), and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over the Firms, and it appearing that the Settlement Agreement and Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further Ordered, that Mattel shall pay, for and on behalf of the Firms, a civil penalty in the amount of two million three hundred thousand dollars ($2,300,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Mattel to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Mattel at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8th day of June 2009.

By Order of the Commission.

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E9–13879 Filed 6–11–09; 8:45 am]
BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy. U.S. Patent Application Number 11/417,283 filed on June 1, 2006, Navy Case Number 83036 entitled ''Imagery Analysis Tool''; U.S. Patent Application Number 10/956,522 filed on September 23, 2004, Navy Case Number 83683 entitled ''Method for Comparing Tabular Data''; U.S. Patent Application Number 11/251,535 filed on September 29, 2005, Navy Case Number 85000 entitled ''Just In Time Wiring Information System''; U.S. Patent Application Number 11/357,460 filed on February 14, 2006, Navy Case Number 96400 entitled ''Apparatus and Method to Amalgamate Substances''; U.S. Patent Application Number 11/482,303 filed on July 11, 2006, Navy Case Number 97495 entitled ''Hoisting Harness Assembly Tool''; U.S. Patent Application Number 11/998,863 filed on November 28, 2007, Navy Case Number 97722 entitled ''Method and Apparatus for Non-Invasively Estimating Body Core Temperature''; U.S. Patent Application Number 11/481,227 filed on July 7, 2006, Navy Case Number 97763 entitled ''Portable Medical Equipment Suite''; U.S. Patent Application Number 11/296,723 filed on December 6, 2006, Navy Case Number 97798 entitled ''Global Visualization Process for Personal Computer Platforms (GVP+); U.S. Patent Application Number 11/789,118 filed on April 5, 2007, Navy Case Number 98491B entitled ''Method of Producing and Controlling the Atomization of an Output Flow from a C–D Nozzle''; U.S. Patent Application Number 12/432,019 filed on April 28, 2009, Navy Case Number PAX06 entitled ''Method for Producing Nanoparticles''; U.S. Patent Application Number 12/469,197 filed on May 20, 2009, Navy Case Number PAX14 entitled ''Fast Rope''; U.S. Patent Number 5,520,331 entitled ''Liquid Atomizing Nozzle'' issued May 28, 1996; U.S. Patent Number 6,233,740 entitled ''Aircrew Integrated Recovery Survival Vest'' issued May 22, 2001; U.S. Patent Number 6,240,742 entitled ''Modular Portable Air-Conditioning System'' issued June 5, 2001; U.S. Patent Number 6,241,164 entitled ''Effervescent Liquid Fine Mist Apparatus and Method'' issued June 5, 2001; U.S. Patent Number 6,484,072 entitled ''Embedded Terrain Awareness Warning System for Aircraft'' issued November 19, 2002; U.S. Patent Number 6,598,802 entitled ''Effervescent Liquid Fine Mist Apparatus and Method'' issued July 29, 2003; U.S. Patent Number 6,659,963 entitled ''Apparatus for Obtaining Temperature and Humidity Measurements'' issued December 9, 2003; U.S. Patent Number 7,176,812 B1 entitled ''Wireless Blade Monitoring System and Process'' issued February 13, 2007; U.S. Patent Number 7,225,999 entitled ''Spray Array Apparatus'' issued June 5, 2007; U.S. Patent Number 7,331,183 B2 entitled

''Personal Portable Environmental Control System'' issued February 19, 2008; U.S. Patent Number 7,380,467 B2 entitled ''Bond Integrity Tool'' issued June 3, 2008; U.S. Patent Number 7,494,670 B2 entitled ''Composition and Process for Removing and Preventing Mildew and Fungal Growth'' issued February 24, 2009; U.S. Patent Number 7,523,876 entitled ''Adjustable Liquid Atomization Nozzle'' issued April 28, 2009.

ADDRESSES: Request for data and inventor interviews should be directed to Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business and Partnership Office, Office of Research and Technology Applications, Building 505, 22473 Millstone Road, Patuxent River, MD 20670, telephone 301–342–5586 or e-mail at: *Paul.Fritz@navy.mil.*

DATES: Request for data, samples, and inventor interviews should be made prior to September 1, 2009.

FOR FUTHER INFORMATION CONTACT: Mr. Paul Fritz, Office of Research and Technology Applications, Building 505, Naval Air Warfare Center Aircraft Division, 22473 Millstone Road, Patuxent River, MD 20670, telephone 301–342–5586 or e-mail at: *Paul.Fritz@navy.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Navy intends to move expeditiously to license these inventions. All licensing application packages and commercialization plans must be returned to Naval Air Warfare Center Aircraft Division, Business and Partnership Office, Office of Research and Technology Applications, Building 505, 22473 Millstone Road, Patuxent River, MD 20670.

The Navy, in its decisions concerning the granting of licenses, will give special consideration to existing licensees, small business firms, and consortia involving small business firms. The Navy intends to ensure that its licensed inventions are broadly commercialized throughout the United States.

PCT application may be filed for each of the patents as noted above. The Navy intends that licensees interested in a license in territories outside of the United States will assume foreign prosecution and pay the cost of such prosecution.

Authority: 35 U.S.C. 207 and 37 CFR part 404.

Dated: June 2, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–13857 Filed 6–11–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Nominations for Membership on the Ocean Research and Resources Advisory Panel (ORRAP)

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The Ocean Research and Resources Advisory Panel (ORRAP) is soliciting nominations for new members.

DATES: Nominations should be submitted no later than July 1, 2009.

ADDRESSES: Nominations should be submitted via e-mail to CDR D. Benjamin Reeder, U.S. Navy, at *reederd@onr.navy.mil.* Contact Information: Office of Naval Research, 875 North Randolph Street, Suite 1425, ATTN: ONR Code 322B Room 1075, Arlington, VA 22203, telephone (703) 696–4395.

FOR FURTHER INFORMATION CONTACT: Dr. Charles L. Vincent, Office of Naval Research, 875 North Randolph Street, Suite 1425, Arlington, VA 22203–1995, telephone (703) 696–4118.

SUPPLEMENTARY INFORMATION: ORRAP is a statutorily mandated Federal advisory committee that provides senior scientific advice to the National Oceanographic Research Leadership Council (NORLC), the governing body of the National Oceanographic Partnership Program (NOPP). ORRAP advises the NORLC on policies, procedures, selection of projects and allocation of funds, as well as other responsibilities that NORLC considers appropriate. NORLC conducts its business through the Interagency Committee on Ocean Science and Resource Management Integration (ICOSRMI), an equivalent governance body under the U.S. Ocean Action Plan. Hence, ORRAP advises ICOSRMI.

Panel Member Duties and Responsibilities: Members of the panel represent the National Academy of Sciences, the National Academy of Engineering, the Institute of Medicine, ocean industries, State governments, academia and others, including individuals who are eminent in the fields of marine science, marine policy, or related fields, including ocean resource management. Members are appointed for four year terms, and are not normally compensated except for travel expenses and per diem while away from their homes in performance of services for the panel.

The panel meets for at least one two-day public meeting per year, but possibly meets three times per year, on dates agreeable by the panel members; attendance at meetings is expected. Intercessional activities not involving formal decisions or recommendations may be carried out electronically, and the panel may establish sub-panels composed of less than full membership to carry out panel duties.

Nominations: Any interested person or organization may nominate qualified individuals (including one's self) for membership on the panel. Nominated individuals should have extended expertise and experience in the field of ocean science and/or ocean resource management. Nominations should be identified by name, occupation, position, address, telephone number, e-mail address, and a brief paragraph describing their qualifications in the context of the ORRAP Charter (*http://www.nopp.org/Dev2Go.web?id=207773*). Including a résumé or curriculum vitae is recommended.

Process and Deadline for Submitting Nominations: Submit nominations via e-mail to CDR D. Benjamin Reeder (*reederd@onr.navy.mil*) no later than July 1, 2009. From the nominees identified by respondents to this **Federal Register** Notice, the ORRAP Nomination Committee will down-select to a short-list of available candidates (150% of the available open positions for consideration). These selected candidates will be required to fill-out the ''Confidential Financial Disclosure Report'' OGE Form 450. This confidential form will allow Government officials to determine whether there is a statutory conflict between a person's public responsibilities and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form and additional guidance may be viewed at: (*http://www.usoge.gov/forms/oge450_pdf/oge450_automated.pdf*).

In accordance with section 7903 of title 10, United States Code, the short-list of candidates will then be submitted for approval by the Secretary of the Navy. New candidates are expected to be selected with terms to begin in July 2010.

The selection of new panel members will be based on the nominee's qualifications to provide senior scientific advice to the NORLC; the availability of the potential panel member to fully participate in the panel meetings; absence of any conflict of interest or appearance of lack of impartiality, and lack of bias; the candidates' areas of expertise and professional qualifications; and

achieving an overall balance of different perspectives and expertise on the panel.

Dated: June 5, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–13818 Filed 6–11–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 13, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov.*

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 IC Clearance Official, 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.

Dated: June 9, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: Revision.

Title: Higher Education Opportunity Act (HEOA) Title II Reporting Forms on Teacher Quality and Preparation.

Frequency: Annually.

Affected Public: Businesses or other for-profit; not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,309.

Burden Hours: 235,961.

Abstract: The Higher Education Opportunity Act of 2008 calls for annual reports from states and institutions of higher education (IHEs) on the quality of teacher preparation and state teacher certification and licensure (Pub. L. 110–315, sections 205–208). The purpose of the reports is to provide greater accountability in the preparation of the nation's teaching forces and to provide information and incentives for its improvement. IHEs that have teacher preparation programs must report annually to their states on the performance of their program completers on teacher certification or licensure tests. States, in turn, must report test performance information, institution by institution, to the Secretary of Education. They must also report on their requirements for teacher certification and licensure, state standards, alternative routes to certification, low performing teacher preparation programs and related items.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 3990. 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 the Internet address *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. E9–13856 Filed 6–11–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Extension of Public Comment Period for the Revised Draft Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center, DOE/EIS–0226D (Revised)

AGENCY: Department of Energy.

ACTION: Notice of extension of public comment period.

SUMMARY: This notice announces an extension of the public comment period initially published in the December 5, 2008 Notice of Availability (73 FR 74160) for the Revised Draft Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center [DOE/EIS–0226–D (Revised)] (referred to as the ''Draft Decommissioning and/or Long-Term Stewardship EIS'' or ''Draft EIS.''). The comment period will now close on September 8, 2009.

DATES: The comment period will be extended from June 8, 2009 to September 8, 2009.

ADDRESSES: Copies of this Draft EIS are available for review at the Concord Public Library, 18 Chapel Street, Springville, New York 14141, (716) 592–7742, the Ashford Office Complex Reading Room, 9030 Route 219, West Valley, New York 14171, (716) 942–4555 and the U.S. Department of Energy, FOIA Reading Room, 1E–190, Forrestal Bldg., 1000 Independence Ave., SW., Washington, DC 20585, 202–586–3142.

This Draft EIS is also available at *http://www.westvalleyeis.com.*

Written comments may be mailed to Catherine Bohan, EIS Document Manager, West Valley Demonstration Project, U.S. Department of Energy, P.O. Box 2368, Germantown, MD 20874. Comments or requests for information may also be submitted via e-mail at *http://www.westvalleyeis.com* or by faxing toll-free to 866–306–9094. Please mark all envelopes, faxes and e-mail: ''Draft Decommissioning and/or Long-Term Stewardship EIS Comments.'' All comments received during the comment

period, as extended, will be considered during preparation of the Final EIS.

FOR FURTHER INFORMATION CONTACT: For information regarding the WVDP or this Draft EIS, contact Catherine Bohan at the above address. The following Web sites may also be accessed for additional information on the Draft EIS or the West Valley Site: *http://www.westvalleyeis.com* or *http://www.wv.doe.gov.*

Issued in Washington, DC, on June 5, 2009.

Michael C. Moore,

Director, Office of Small Sites.

[FR Doc. E9–13837 Filed 6–11–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–2157–188]

Public Utility District No. 1 of Snohomish County; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

June 5, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* P–2157–188.

c. *Date Filed:* June 1, 2009.

d. *Applicant:* Public Utility District No. 1 of Snohomish County.

e. *Name of Project:* Henry M Jackson Hydroelectric Project.

f. *Location:* The existing project is located on the Sultan River in Snohomish County, Washington, about 20 miles east of Everett, Washington. The project penstock underlies 10.9 acres of Mount Baker-Snoqualmie National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Public Utility District No. 1 of Snohomish County (District), Steven J. Klein, General Manager, 2320 California Street, P.O. Box 1107, Everett, WA 98206–1107.

i. *FERC Contact:* David Turner (202) 502–6091 or via e-mail at *david.turner@ferc.gov*.

j. This application is not ready for environmental analysis at this time.

k. *Project Description:* The existing project consists of the following: (1) Spada Lake, with a surface area of 1,802 acres at a normal maximum water surface elevation of 1,445 feet msl; (2) Culmback dam, a 640-foot-long, 262-foot-high earth and rockfill dam with a crest elevation of 1,470 feet msl located at River Mile (RM) 16.5 on the Sultan River; (3) a concrete morning glory spillway with a crest elevation of 1,450 feet msl located approximately 250 feet from the right bank; (4) a system of conduits and valves under the dam which provide the minimum flow downstream of Culmback dam; (5) a 110-foot-tall concrete powerhouse intake structure located approximately 250 feet upstream of the dam with three 20-foot movable panels to allow withdrawal from different depths; (6) a penstock consisting of a 3.8-mile-long, 14-foot-diameter unlined tunnel leading to a 3.7-mile-long, 10-foot-diameter underground pipeline; (7) a two-story reinforced-concrete powerhouse located at RM 4.3; (8) four generating units with a total installed capacity of 111.8 MW; Units 1 and 2 are 47.5 MW Pelton turbines, which discharge water directly into a 40-foot-long discharge canal to the Sultan River; Units 3 and 4 are 8.4 MW Francis turbines, which discharge water through the Lake Chaplain water supply pipeline; (9) the approximately 3.5-mile-long, 72-inch-diameter Lake Chaplain water supply pipeline, which routes water from the Francis turbines to the Portal 2 structure at Lake Chaplain; (10) the Portal 2 structure, which diverts flows from the Lake Chaplain pipeline to Lake Chaplain (a 450-acre reservoir which serves as the City of Everett's water supply) or to the diversion dam tunnel and pipeline; (11) a 1.5-mile-long, concrete-lined tunnel and a 2,000-foot-long, 72-inch-diameter concrete pipeline connecting Lake Chaplain and the Sultan River immediately upstream of the diversion dam; (12) a 120-foot-long, 20-foot-high, concrete gravity diversion dam which was originally constructed to divert water from the Sultan River to Lake Chaplain; and (13) other appurtenant equipment. Project operations are guided by reservoir rule curves which are designed to minimize spill at Spada Lake while providing minimum flow releases to the Sultan River downstream of the diversion dam. The District proposes the following changes to the project: (1) Modifications to the project boundary that include additional land and exclude certain land included in the existing project boundary; (2) a new Operations Plan based on revised Spada Lake rule curves; (3) aquatic habitat enhancement measures; (4) measures to protect and enhance wildlife habitat; (5) measures to enhance recreational opportunities; and (6) measures to protect historic properties.

l. *Locations of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:*

The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate. For example, issuance of the Ready for Environmental Analysis Notice is based on the assumption that there will be no additional information.

Milestone	Date
Application Deficiency Determination Letter and Issuance of Additional Information Requests (AIRs)	July 2009.
Notice of Acceptance/Notice of Ready for Environmental Analysis	July 2009.
Filing of Interventions, Recommendations, Terms and Conditions, and Fishway Prescriptions	September 2009.
Reply Comments Due	November 2009.
Issuance of Draft EA	March 2010.
Comments on Draft EA Due	April 2010.
Filing of Modified Terms and Conditions	June 2010.
Issuance of Final EA	September 2010.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13787 Filed 6–11–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

June 4, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–683–000.

Applicants: Caledonia Energy Partners, LLC.

Description: Caledonia Energy Partners, LLC submits First Revised Sheet No 55 *et al.* to its FERC Gas Tariff, Original Volume No. 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0032.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–684–000.

Applicants: Gas Transmission Northwest Corporation.

Description: Gas Transmission Northwest Corporation submits Fourth Revised Sheet 101 *et al.* to its FERC Gas Tariff, Third Revised Volume 1–A, to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0039.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–685–000.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Company submits Second Revised Sheet 91 *et al.* to its FERC Gas Tariff, Second Revised Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0033.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–686–000.

Applicants: Portland Natural Gas Transmission System.

Description: Portland Natural Gas Transmission System submits First Revised Sheet 323 *et al.* to its FERC Gas Tariff, Second Revised Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0040.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–687–000.

Applicants: Equitrans, L.P.

Description: Equitrans, L.P. submits Second Revised Sheet 286 *et al.* to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0034.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–688–000.

Applicants: WestGas InterState, Inc.

Description: WestGas InterState, Inc. submits Eighth Revised Sheet 92 *et al.* to its FERC Gas Tariff, First Revised Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0035.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–689–000.

Applicants: North Baja Pipeline, LLC.

Description: North Baja Pipeline, LLC submits Third Revised Sheet 101 *et al.* to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0036.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–690–000.

Applicants: Trans-Union Interstate Pipeline, L.P.

Description: Trans-Union Interstate Pipeline, L.P. submits First Revised Sheet 111 *et al.* to FERC Gas Tariff, Original Volume 1, to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0041.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–691–000.

Applicants: Freebird Gas Storage, LLC.

Description: Freebird Gas Storage, LLC submits First Revised Sheet 146 *et al.* to FERC Gas Tariff, First Revised Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0042.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–692–000.

Applicants: Transcontinental Gas Pipe Line Corporation.

Description: Transcontinental Gas Pipe Line Corporation submits First Revised Sheet 433 *et al.* to its FERC Gas Tariff, Fourth Revised Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0037.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–693–000.

Applicants: Pine Needle LNG Company, LLC.

Description: Pine Needle LNG Company submits Sixth Revised Sheet 89 *et al.* to its FERC Gas Tariff, Original Volume 1 effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0038.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–694–000.

Applicants: National Fuel Gas Supply Corporation.

Description: National Fuel Gas Supply Corporation submits Ninth Revised Sheet 457 and Seventh Revised Sheet 458 to FERC Gas Tariff, Fourth Revised Volume 1, to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0148.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–695–000.

Applicants: Dauphin Island Gathering Partners.

Description: Dauphin Island Gathering Partners submits Second Revised Sheet 168 *et al.* to its FERC Gas Tariff, First Revised Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0130.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–696–000.

Applicants: Cimarron River Pipeline, LLC.

Description: Cimarron River Pipeline, LLC submits First Revised Sheet 335 *et al.* to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0129.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–697–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Midcontinent Express Pipeline LLC submits First Revised Sheet No 254 *et al.* to its FERC Gas Tariff, Original Volume No 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0128.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–698–000.

Applicants: Portland General Electric Company.

Description: Portland General Electric Company submits Second Revised Sheet 27 *et al.* to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0127.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–699–000.
Applicants: Trunkline LNG Company, LLC.
Description: Trunkline LNG Company, LLC submits Fourth Revised Sheet 130 to its FERC Gas Tariff, Second Revised Volume 1–A to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0126.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–700–000.
Applicants: Trunkline Gas Company, LLC.
Description: Trunkline Gas Company, LLC submits Fourth Revised Sheet No 322 to its FERC Gas Tariff, Third Revised Volume No 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0125.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–701–000.
Applicants: Panhandle Eastern Pipe Line Company, LP.
Description: Panhandle Eastern Pipe Line Company, LP submits Fourth Revised Sheet 343 *et al.* to its FERC Gas Tariff, Third Revised Volume 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0124.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–702–000.
Applicants: Williston Basin Interstate Pipeline Company.
Description: Williston Basin Interstate Pipeline Company submits Eleventh Revised Sheet No 371 *et al.* to its FERC Gas Tariff, Second Revised Volume No 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0123.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–703–000.
Applicants: Paiute Pipeline Company.
Description: Paiute Pipeline Company submits Second Revised Sheet 56A *et al.* to its FERC Gas Tariff, Second Revised Volume 1–A to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0122.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–704–000.
Applicants: Destin Pipeline Company, LLC.
Description: Destin Pipeline Company, LLC. submits Fourth Revised Sheet 38A *et al.* to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0121.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–705–000.
Applicants: Sea Robin Pipeline Company, LLC.
Description: Sea Robin Pipeline Company, LLC submits Third Revised Sheet No 194 to its FERC Gas Tariff, Second Revised Volume No 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0120.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–706–000.
Applicants: Southeast Supply Header, LLC.
Description: Southeast Supply Header, LLC submits First Revised Sheet No. 342 *et al.* to FERC Gas Tariff, Original Volume No. 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0119.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–707–000.
Applicants: White River Hub, LLC.
Description: White River Hub, LLC submits First Revised Sheet No. 145 to FERC Gas Tariff, Original Volume No. 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0118.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–708–000.
Applicants: Questar Pipeline Company.
Description: Questar Pipeline Company submits Thirteenth Revised Sheet No. 99A *et al.* to FERC Gas Tariff, Original Volume No. 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0117.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–709–000.
Applicants: Questar Overthrust Pipeline Company.
Description: Questar Overthrust Pipeline Company submits First Revised Sheet No. 108 to FERC Gas Tariff, Second Revised Volume No. 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0116.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–710–000.
Applicants: Clear Creek Storage Company, LLC.
Description: Clear Creek Storage Company, LLC submits Sixth Revised Sheet No. 77 *et al.*, to FERC Gas Tariff, Original Volume No. 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0115.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–711–000.
Applicants: Questar Southern Trails Pipeline Company.
Description: Questar Southern Trails Pipeline Co. submits Fourth Revised Sheet No. 101 to FERC Gas Tariff, Original Volume No. 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0114.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–712–000.
Applicants: Ozark Gas Transmission, LLC.
Description: Ozark Gas Transmission, LLC submits First Revised Sheet No. 177 to FERC Gas Tariff, First Revised Volume No. 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0113.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–713–000.
Applicants: Columbia Gulf Transmission Company.
Description: Columbia Gulf Transmission Co. submits Eleventh Revised Sheet No. 286 *et al.* to FERC Gas Tariff, Second Revised Volume No. 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0112.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–714–000.
Applicants: Crossroads Pipeline Company.
Description: Crossroads Pipeline Co. submits First Revised Sheet No. 380 *et al.* to FERC Gas Tariff, First Revised Volume No. 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0111.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–715–000.
Applicants: Hardy Storage Company, LLC.
Description: Hardy Storage Co., LLC submits First Revised Sheet No. 186 *et al.* to FERC Gas Tariff, Original Revised Volume No. 1 to be effective 8/1/09.
Filed Date: 06/01/2009.
Accession Number: 20090603–0109.
Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–716–000.
Applicants: Central Kentucky Transmission Company.
Description: Central Kentucky Transmission Company submits First

Revised Sheet No. 254 *et al.,* to FERC Gas Tariff, Original Revised Volume No. 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0110.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–717–000.

Applicants: Steckman Ridge, LP.

Description: Steckman Ridge, LP submits First Revised Sheet No. 281 *et al.* to FERC Gas Tariff, Original Volume No. 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0108.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–718–000.

Applicants: Egan Hub Storage, LLC.

Description: Egan Hub Storage, LLC submits Fourth Revised Sheet No. 156 *et al.* to FERC Gas Tariff, First Revised Volume No. 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0107.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–719–000.

Applicants: Gulfstream Natural Gas System, LLC.

Description: Gulfstream Natural Gas System, LLC submits Seventh Revised Sheet No. 202 *et al.* to its FERC Gas Tariff, Original Volume No. 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0104.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–720–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: Algonquin Gas Transmission, LLC submits Third Revised Sheet No. 614 *et al.* to its FERC Gas Tariff, Fifth Revised Volume No. 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0105.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–721–000.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits Sixth Revised Sheet No. 643 *et al.* to FERC Gas Tariff, Seventh Revised Volume No. 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0106.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–722–000.

Applicants: Empire Pipeline, Inc.

Description: Empire Pipeline, Inc submits First Revised Sheet No. 225 *et al.* to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0149.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–723–000.

Applicants: Kern River Gas Transmission Company.

Description: Kern River Gas Transmission Company submits First Revised Sheet No. 74 *et al.* to its FERC Gas Tariff, Second Revised Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0150.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–724–000.

Applicants: Northern Border Pipeline Company.

Description: Northern Border Pipeline Company submits Eighth Revised Sheet No. 295 *et al.* to its FERC Gas Tariff, First Revised Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0151.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–725–000.

Applicants: B–R Pipeline Company.

Description: B–R Pipeline Company submits Second Revised Sheet 128 in its FERC Gas Tariff Original Volume 1.

Filed Date: 06/01/2009.

Accession Number: 20090603–0152.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–726–000.

Applicants: Honeoye Storage Company.

Description: Honeoye Storage Corporation submits First Revised Sheet No. 8 *et al.* to its FERC Gas Tariff, Original Volume 1A to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0139.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–727–000.

Applicants: SG Resources Mississippi, LLC.

Description: SG Resources Mississippi, LLC submits First Revised Sheet 154 *et al.* to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0140.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–728–000.

Applicants: Tres Palacios Gas Storage LLC.

Description: Tres Palacios Gas Storage, LLC submits First Revised Sheet 150 *et al.* to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0141.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–729–000.

Applicants: Tuscarora Gas Transmission Company.

Description: Tuscarora Gas Transmission Company submits Ninth Revised Sheet 37A *et al.* to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0142.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–730–000.

Applicants: Southwest Gas Storage Company.

Description: Southwest Gas Storage Company submits Ninth Revised Sheet 147 to its FERC Gas Tariff, First Revised Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0143.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–731–000.

Applicants: Petal Gas Storage LLC.

Description: Petal Gas Storage, LLC. submits Seventh Revised Sheet 7 *et al.* to its FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0144.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–732–000.

Applicants: High Island Offshore System, LLC.

Description: High Island Offshore System, LLC submits Fifth Revised Sheet 92 *et al.* to its FERC Gas Tariff, Third Revised Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0145.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–734–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Southern Star Central Gas Pipeline, Inc submits Third Revised Sheet 289 *et al.* to its FERC Gas Tariff, First Revised Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090603–0147.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 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. E9–13796 Filed 6–11–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

June 5, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP02–534–015.

Applicants: Guardian Pipeline, LLC.

Description: Guardian Pipeline, LLC submits Seventh Revised Sheet No. 0 *et al.* to its FERC Gas Tariff, Original Volume No. 1 to be effective 6/1/09.

Filed Date: 05/29/2009.

Accession Number: 20090601–0181.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 10, 2009.

Docket Numbers: RP96–320–107.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits revised Exhibit B to the Amendment to Negotiated Rate Late Letter Agreement executed by Gulf South regarding the East Texas to Mississippi Expansion Project.

Filed Date: 05/29/2009.

Accession Number: 20090529–0105.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 10, 2009.

Docket Numbers: RP99–176–200.

Applicants: Natural Gas Pipeline Company of America.

Description: Natural Gas Pipeline Company of America LLC submits Second Revised Sheet 35B.01 to FERC Gas Tariff Gas Tariff, Seventh Revised Volume 1, to be effective 6/1/09.

Filed Date: 05/29/2009.

Accession Number: 20090529–0104.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 10, 2009.

Docket Numbers: RP00–426–048.

Applicants: Texas Gas Transmission. LLC.

Description: Texas Gas Transmission, LLC submits two negotiated rate agreements with ProLiance Energy, LLC and AEP Generating Company.

Filed Date: 06/03/2009.

Accession Number: 20090604–0484.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–282–003.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Company submits 2nd Sub. Fourth Revised Sheet 342 *et al.* of FERC Gas Tariff, Fifth Revised Volume 1, to be effective 2/26/09.

Filed Date: 06/03/2009.

Accession Number: 20090604–0482.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–712–001.

Applicants: Ozark Gas Transmission, LLC.

Description: Ozark Gas Transmission, LLC submits Substitute First Revised Sheet 177 to FERC Gas Tariff, First Revised Volume 1, to be effective 8/1/09.

Filed Date: 06/03/2009.

Accession Number: 20090604–0483.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–13795 Filed 6–11–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

June 5, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–733–000.

Applicants: Texas Gas Transmission, LLC.

Description: Texas Gas Transmission, LLC submits Second Revised Sheet 99A to FERC Gas Tariff, Third Revised Volume 1, to be effective 6/3/09.

Filed Date: 06/03/2009.

Accession Number: 20090604–0481.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–735–000.

Applicants: Maritimes & Northeast Pipeline, LLC.

Description: Maritimes & Northeast Pipeline, LLC submits Seventh Revised Sheet No. 307 *et al.* to FERC Gas Tariff, First Revised Volume No. 1 in compliance with Order No. 587–T, to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090604–0115.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–736–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: East Tennessee Natural Gas, LLC submits Sixth Revised Sheet No. 1 *et al.* to FERC Gas Tariff, Third Revised Volume No. 1 in compliance with Order No. 587–T, to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090604–0114.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–737–000.

Applicants: Tennessee Gas Pipeline Company.

Description: Tennessee Gas Pipeline Co submits Eleventh Revised Sheet No. 99 *et al.* to FERC Gas Tariff, Fifth Revised Volume No. 1 in compliance with Order No. 587–T, effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090604–0113.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–738–000.

Applicants: MarkWest Pioneer, LLC.

Description: MarkWest Pioneer, LLC submits First Revised Sheet No. 99 *et al.* to FERC Gas Tariff, Third Revised Volume No. 1 in compliance with Order No. 587–9 and 698, effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090604–0112.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–739–000.

Applicants: Iroquois Gas Transmission System, LP.

Description: Iroquois Gas Transmission System, LP submits Ninth Revised Sheet No. 57 *et al.* to FERC Gas Tariff, First Revised Volume No. 1, to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090604–0111.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–740–000.

Applicants: Columbia Gas Transmission, LLC.

Description: Columbia Gas Transmission, LLC submits First Revised Sheet No. 529 *et al.* to FERC Gas Tariff, Third Revised Volume No. 1, to be effective 7/2/09.

Filed Date: 06/02/2009.

Accession Number: 20090604–0110.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–741–000.

Applicants: Alliance Pipeline LP.

Description: Alliance Pipeline LP submits Fourth Revised Sheet No. 276 *et al.* to FERC Gas Tariff, Original Volume No. 1, to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090604–0109.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–742–000.

Applicants: Venice Gathering System, LLC.

Description: Venice Gathering System, LLC submits Fifth Revised Sheet No. 51 *et al.* to FERC Gas Tariff, Original Volume No. 1 in compliance with Order No. 587–T, to be effective 11/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090604–0108.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–743–000.

Applicants: Stingray Pipeline Company, LLC.

Description: Stingray Pipeline Company, LLC submits Reserve Dedication Agreement for FTS–2 service with Mariner Energy Inc *et al.*

Filed Date: 06/02/2009.

Accession Number: 20090604–0478.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–744–000.

Applicants: Colorado Interstate Gas Company.

Description: Colorado Interstate Gas Company submits Seventh Revised Sheet 7A *et al.* to FERC Gas Tariff, First Revised Volume 1, to be effective 6/1/09.

Filed Date: 06/02/2009.

Accession Number: 20090604–0477.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–746–000.

Applicants: Panther Interstate Pipeline Energy, LLC.

Description: Panther Interstate Pipeline Energy, LLC submits Second Revised Sheet 58 *et al.* to its FERC Gas Tariff, Original Volume 1, to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090605–0271.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–747–000.

Applicants: Rockies Express Pipeline LLC.

Description: Rockies Express Pipeline LLC., submits First Revised Sheet 250 *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090605–0270.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–748–000.

Applicants: Quest Pipelines (KPC).

Description: Quest Pipelines (KPC) submits First Revised Sheet 190 *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090605–0269.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–749–000.

Applicants: NGO Transmission, Inc.

Description: NGO Transmission, Inc submits Third Revised Sheet 113 *et al.* to its FERC Gas Tariff, Original Volume 1, to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090605–0268.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–750–000.

Applicants: MarkWest New Mexico, LLC.

Description: MarkWest New Mexico, LLC submits First Revised Sheet 113 *et al.* to its FERC Gas Tariff, Second Revised Volume 1, to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090605–0267.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–751–000.

Applicants: Trailblazer Pipeline Company LLC.

Description: Trailblazer Pipeline Company, LLC submits First Revised Sheet 244 *et al.* to FERC Gas Tariff, First Revised Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090605–0266.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–752–000.

Applicants: Horizon Pipeline Company, LLC.

Description: Horizon Pipeline Company, LLC submits Fourth Revised Sheet 223 *et al.* to FERC Gas Tariff, Original Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090605–0265.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–753–000.

Applicants: TransColorado Gas Transmission Company L.

Description: TransColorado Gas Transmission Company submits First Revised Sheet 203 to its FERC Gas Tariff, Second Revised Volume 1 to be effective 8/1/09.

Filed Date: 06/01/2009.

Accession Number: 20090605–0264.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 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 dockets(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. E9–13794 Filed 6–11–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

June 8, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP09–679–000.

Applicants: Wyckoff Gas Storage Company, LLC.

Description: Wyckoff Gas Storage Company, LLC submits First Revised Sheet No. 30 *et al.* to its FERC Gas Tariff, Original Volume No. 1.

Filed Date: 06/01/2009.

Accession Number: 20090604–0283.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–680–000.

Applicants: Florida Gas Transmission Company, LLC.

Description: Florida Gas Transmission Company submits Second Revised Sheet No. 203 to its FERC Gas Tariff, Fourth Revised Volume No. 1.

Filed Date: 06/01/2009.

Accession Number: 20090604–0284.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–681–000.

Applicants: Transwestern Pipeline Company, LLC.

Description: Transwestern Pipeline Company, LLC submit Second Revised Sheet No. 96 to its FERC Gas Tariff, Third Revised Volume No. 1.

Filed Date: 06/01/2009.

Accession Number: 20090604–0285.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–682–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits Fifth Revised Sheet No. 205 *et al.* to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 7/2/09.

Filed Date: 06/01/2009.

Accession Number: 20090604–0286.

Comment Date: 5 p.m. Eastern Time on Monday, June 15, 2009.

Docket Numbers: RP09–754–000.

Applicants: Rendezvous Pipeline Company, LLC.

Description: Rendezvous Pipeline Company, LLC submits First Revised Sheet No. 24 *et al.* to it FERC Gas Tariff, Original Volume No. 1.

Filed Date: 06/05/2009.

Accession Number: 20090605–0302.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 17, 2009.

Docket Numbers: RP09–755–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits Thirty-Ninth Revised Sheet No. 1 *et al.* to its FERC Gas Tariff, Second Revised Volume No. 1A.

Filed Date: 06/04/2009.

Accession Number: 20090605–0301.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 16, 2009.

Docket Numbers: RP09–756–000.

Applicants: Texas Eastern Transmission LP.

Description: Texas Eastern Transmission, LP submits Petition for Temporary Waiver of Tariffs Provisions and Request for Expedited Action.

Filed Date: 06/05/2009.

Accession Number: 20090608–0141.

Comment Date: 5 p.m. Eastern Time on Wednesday, June 17, 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 dockets(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. E9–13793 Filed 6–11–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–50–000]

Louisiana Public Service Commission Complainant; Notice of Amended Complaint; Entergy Corporation, Entergy Services, Inc., Entergy Louisiana, LLC., Entergy Arkansas, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States Louisiana, Inc., Entergy Texas, Inc., Respondents

June 5, 2009.

Take notice that on June 5, 2009, the Louisiana Public Service Commission (Complainant) filed an amendment to its May 1, 2009 Complaint, requesting to remove all issues and claims in Paragraphs 32 through 51 which relate to the ''Union Pacific Settlement'' and the ''Texas Rate Freeze Disallowance.'' These issues were resolved in an Offer of Settlement and Partial Settlement Agreement among all active parties, who all support the Offer of Settlement filed with the Commission on May 21, 2009, in Docket No. ER08–1056–000.

The Complainant states that a copy of the complaint has been served on the Respondent.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online 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 June 25, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13789 Filed 6–11–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–58–000]

Michigan Public Power Agency, Michigan South Central Power Agency, and Wolverine Power Supply Cooperative, Inc. Complainants v. Midwest Independent Transmission System Operator, Inc. Respondent; Notice of Complaint

June 5, 2009.

Take notice that on June 3, 2009, pursuant to section 206 of the Commission's Rules and Practice and Procedure, 18 CFR 385.206 and sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), the Michigan Public Power Agency (MPPA), the Michigan South Central Power Agency (MSCPA), and Wolverine Power Supply Cooperative, Inc. (Wolverine) (collectively, the Michigan Parties) filed a formal complaint against Midwest Independent Transmission System Operator, Inc. (Midwest ISO) requesting that the Commission determine and rule that the Midwest ISO is prohibited from assessing charges under Schedule 26 of its Open Access Energy Market and Transmission Tariff on load served under the Michigan Parties' respective Carved-Out Grandfathered Agreements.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 24, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13791 Filed 6–11–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–57–000]

Astoria Gas Turbine Power LLC, Complainant v. New York Independent System Operator, Inc., Respondent; Notice of Complaint

June 5, 2009.

Take notice that on June 2, 2009, Astoria gas Turbine Power LLC (NRG) filed a complaint against the New York Independent System Operator, Inc. (NYISO) pursuant to section 206 of the Federal Power Act regarding NYISO's failure to place the Astoria Repowering Project into the 2009 Class Year Annual Transmission Reliability Assessment, necessary to allow the project to interconnect with the NYISO transmission system.

NRG certifies that copies of the complaint were served on the NYISO.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s).

For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 22, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13790 Filed 6–11–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–36–005]

Weavers Cove Energy, LLC; Notice of Technical Conference

June 5, 2009.

On Tuesday, June 16, 2009, at 9 a.m. (EDT), staff of the Office of Energy Projects will convene an engineering design and technical conference regarding the proposed Weavers Cove Energy Offshore Berth Project (cryogenic conference). The conference will be held at the Venus de Milo in Swansea, Massachusetts. The Venus de Milo is located at 75 GAR Highway, Swansea, MA 02777. For venue details call (508) 678–3901.

In view of the nature of Critical Energy Infrastructure Information to be explored, the cryogenic conference will not be open to the public. No recording devices will be allowed at the conference. Attendance at this conference will be limited to existing parties to the proceeding (anyone who has specifically requested to intervene as a party) and to representatives of interested Federal, State, and local agencies. Any person planning to attend the June 16th cryogenic conference must register by close of business on Thursday, June 11, 2009. Registrations may be submitted either online at *http://www.ferc.gov/whats-new/registration/cryo-conf-form.asp* or by faxing a copy of the form (found at the referenced online link) to 202–208–0353. All attendees must sign a non-disclosure statement prior to entering the conference. For additional information regarding the cryogenic conference, please contact Heather Ferree at 202–502–6414.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13792 Filed 6–11–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–426–000]

Northwest Pipeline GP; Notice of Request Under Blanket Authorization

June 5, 2009.

Take notice that on June 2, 2009, Northwest Pipeline GP (Northwest), P.O. Box 58900, Salt Lake City, Utah 84158–0900, filed in Docket No. CP09–426–000, an application, pursuant to sections 157.205 and 157.210 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to install pipeline looping at Northwest's Plymouth compressor station in Benton County, Washington, under Northwest's blanket certificate issued in Docket No. CP82–433–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Northwest proposes to install approximately 3,500 feet of 24-inch diameter pipeline looping and associated bypass piping and appurtenances at the Plymouth compressor station in Benton County. Northwest states that the proposed facilities would provide an additional 10,000 Dekatherms per day (Dth/d) of firm transportation capacity between Northwest's Stanfield interconnect with Gas Transmission Northwest Corporation (GTN) located in Umatilla County, Oregon, and the Plymouth compressor station. Northwest states that it would finance the estimated $1,634,662 construction cost of the proposed facilities with funds on hand.

Any questions concerning this application may be directed to Lynn Dalberg, Manager, Certificates and Tariffs, Northwest Pipeline GP, P.O. Box 58900, Salt Lake City, Utah 84158, telephone at (801) 584–6851, facsimile at (801) 584–7764, or via e-mail: *ldalhber@williams.com.*

This filing is available for review at the Commission 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 filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

[1] 20 FERC ¶ 62,412 (1982).

instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–13788 Filed 6–11–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8594–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in **Federal Register** dated April 17, 2009 (74 FR 17860).

Draft EISs

EIS No. 20050084, ERP No. D–FRC–L03012–WA, Capacity Replacement Project, Construction and Operation of 79.5 miles Pipeline; Modify 5 Existing Compressor Stations, U.S. Army COE 10 and 404 Permits, Whatcom, Skagit, Snohomish, King, Pierce and Thurston Counties, WA.

Summary: EPA expressed environmental concerns because wetland impacts have not been fully mitigated; and recommended the implementation of a project-specific erosion control plan. Rating EC2.

EIS No. 20090102, ERP No. D–FAA–A12046–00, PROGRAMMATIC—Streamlining the Processing of Experimental Permit Applications, Issuing Experimental Permits for the Launch and Reentry of Useable Suborbital Rockets.

Summary: EPA has no objection to the proposed action. Rating LO.

EIS No. 20090131, ERP No. D–AFS–F65074–WI, Grub Hoe Vegetation and Transportation Management Project, Proposes to Implement Vegetation Management Activities, Eagle River Florence Ranger District, Chequamegon-Nicolet National Forest, Florence County, WI.

Summary: EPA does not object to the proposed project. Rating LO.

Final EISs

EIS No. 20080419, ERP No. F–NHT–A86245–00, Corporate Average Fuel Economy (CAFE) Proposed Standards for Model Year 2011–2015 Passenger Cars and Light Trucks, Implementation.

Summary: EPA expressed environmental concerns about limited information in the FEIS on the technical assumptions and inputs upon which the document is based.

EIS No. 20090110, ERP No. F–USN–C11023–NJ, Laurelwood Housing Area, Access at Naval Weapons Station Earle, Lease Agreement, Monmouth County, NJ.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20090118, ERP No. F–AFS–L65544–AK, Navy Timber Sale Project, To Address the Potential Effects of Timber Harvesting on Etolin Island, Wrangell Ranger District, Tongass National Forest, AK.

Summary: EPA has no objection to the proposed action.

EIS No. 20090129, ERP No. F–AFS–K65346–CA, Round Valley Fuels Reduction and Vegetation Management Project, Proposes to Reduce Fuel and Manage Vegetation, Funding, Goosenest Ranger District, Klamath National Forest, Siskiyou County, CA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20090130, ERP No. F–NPS–E65079–TN, Great Smoky Mountains National Park General Management Plan Amendment, Implementation, Elkmont Historic District, Sevier County, TN.

Summary: EPA has no objection to the proposed action.

EIS No. 20090135, ERP No. F–BLM–K60041–NV, Lincoln County Land Act (LCLA) Groundwater Development and Utility Right-of-Way Project, Implementation, To Grant a Right-of-Way Permit for Groundwater Development and Utility Facilities, Lincoln County, NV.

Summary: EPA expressed environmental concerns about the long-term availability of the water supply, conservation and water use efficiency, and indirect and cumulative impacts. EPA recommends continued collaboration through a regional groundwater framework to ensure efficient long-term sustainable use of the deep carbonate-rock aquifer, and evaluation and consideration of specific climate change adaptation measures and back-up water supplies.

EIS No. 20090149, ERP No. F–NOA–A91077–00, Amendment 1 to the Tilefish Fishery Management Plan, Proposed Individual Fishing Quota (IFQ) Program, To Reduce Overcapacity in the Commercial Tilefish Fishery, Maine to North Carolina.

Summary: EPA has no objection to the proposed action.

EIS No. 20090169, ERP No. FS–FHW–H40397–MO, Interstate 70 Corridor Improvements, Kansas City to St. Louis, Updated Information, Evaluates if a Truck-Only Lane Strategy is Viable, Kansas City to St. Louis, MO.

Summary: EPA's previous issues have been resolved; therefore, EPA has no objection to the proposed action.

Dated: June 9, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–13861 Filed 6–11–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8594–3]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 06/01/2009 Through 06/05/2009

Pursuant to 40 CFR 1506.9

EIS No. 20090183, Final EIS, NRC, PA, Generic—License Renewal of Nuclear Plants, Supplement 36 to NUREG–1437, Regarding Beaver Valley Power Station, Units 1 and 2, Plant-Specific, Issuing Nuclear Power Plant Operating License for an Additional 20-Year Period, PA, Wait Period Ends:

07/13/2009, Contact: Emmanuel Sayoc 301–415–2989

EIS No. 20090184, Final EIS, DOA, ID, Lakeview-Reeder Fuels Reduction Project, Proposed Fuels Reduction and Road Treatment Activities, Idaho Panhandle National Forests, Priest Lake Ranger District, Bonner County, ID, Wait Period Ends: 07/13/2009, Contact: David Cobb 208–443–6854

EIS No. 20090185, Final EIS, COE, 00, Programmatic—Oyster Restoration in Chesapeake Bay Including the Use of a Native and/or Nonnative Oyster, Implementation, Chesapeake Bay, MD and VA, Wait Period Ends: 07/13/2009, Contact: Craig Seltzer 757–201–7390

EIS No. 20090186, Final EIS, FRC, CA, South Feather Power Project, (Project No. 2099–068), Application to Relicense its 104-megawatt, South Fork Feather River, Lost Creek and Slate Creek, Butte, Yuba, and Plumas Counties, CA, Wait Period Ends: 07/13/2009, Contact: John Mudre 202–502–8902

EIS No. 20090187, Final EIS, CDG, 00, Programmatic—Future of the U.S. Coast Guard Long Range Aids to Navigation (LORAN–C) Program, Implementation,, *Wait Period Ends:* 07/13/2009, Contact: CDR Bob I. Feigenblatt 202–372–1558

Dated: June 9, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–13862 Filed 6–11–09; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Commission Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, June 17, 2009, 10 a.m. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 M Street, NE., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Announcement of Notation Votes, and

2. Notice of Proposed Rulemaking for the Americans with Disabilities Act (ADA)Amendments Act of 2008.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register,** the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above. *Contact Person for More Information:* Stephen Llewellyn, Executive Officer on (202) 663–4070.

Dated: June 8, 2009.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. E9–13822 Filed 6–11–09; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

June 9, 2009.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Contact Judith B. Herman, Federal Communications Commission, at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0999.

Expiration Date: 06/30/2012.

Title: Hearing Aid Compatibility Status Report and Section 20.19, Hearing Aid-Compatible Mobile Handsets (Hearing Aid Compatibility Act).

Form No.: FCC Form 655—electronic only.

Estimated Annual Burden: 925 responses; 12,063 total annual hours; 2.5 hours per response.

Needs and Uses: In the Report and Order in WT Docket 01–309, FCC 03–168, adopted and released in September 2003, the Federal Communications Commission modified the exemption for telephones used with public mobile services from the requirements of the Hearing Aid Compatibility Act of 1988 (HAC Act). The Order required digital wireless phone manufacturers and service providers to make certain digital wireless phones capable of effective use with hearing aids, label certain phones they sold with information about their compatibility with hearing aids, and report to the Commission (at first every six months, then on an annual basis) on the numbers and types of hearing aid compatible phones they were producing or offering to the public.

In February 2008, the Commission adopted final rules in a Report and Order (FCC 08–68) that updated several performance benchmarks and instituted new requirements. To assist the Commission in monitoring the implementation of the new requirements and to provide information to the public, the Report and Order also required manufacturers and service providers to continue to file annual reports on the status of their compliance with the requirements, and required manufacturers and service providers that maintain public websites to publish up-to-date information on those websites regarding their hearing aid-compatible handset models.

Now, as part of its continuing effort to reduce paperwork burden, the Commission is eliminating the use of paper-based annual reports and will require annual reports filed by manufacturers and service providers to be submitted using electronic FCC Form 655 beginning July 15, 2009. Use of the electronic FCC Form 655 will help filers ensure that their reports include all of the required information, will facilitate the Commission's compilation of data from the reports, and will decrease the paperwork burden overall.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–13945 Filed 6–11–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–123; DA 09–211]

Telecommunications Relay Service (TRS) Providers Requesting Compensation from the Interstate TRS Fund Must Comply with Standard Rounding Principles in Measuring the Conversation Time of TRS Calls

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission states that current rules

require that telecommunications relay service (TRS) providers submitting minutes for payment from the Interstate TRS Fund must measure the conversation time of each call to the nearest second, and when the time for such calls is expressed in decimal form, the TRS provider must round the time to the nearest tenth of a minute.

DATES: Effective June 12, 2009.

FOR FURTHER INFORMATION CONTACT: Thomas Chandler, Consumer and Governmental Affairs Bureau, Disability Rights Office at (202) 418–1475 (Voice), (202) 418–0597 (TTY), or e-mail at *Thomas.Chandler@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 09–211, released February 10, 2009, addressing the proper accounting practice to be followed in rounding conversation minutes when seeking compensation for TRS service. Specifically, the Notice states that TRS providers must comply with standard rounding principles in measuring the conversation time of TRS calls. The full text of document DA 09–211 and copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Document DA 09–211 and copies of subsequently filed documents in this matter may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact the Commission's duplicating contractor at its Web site *http://www.bcpiweb.com* or by calling 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Document DA 09–211 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro.*

Synopsis

It has come to the Commission's attention that certain telecommunications relay service (TRS) providers may be improperly ''rounding'' up conversation minutes that are submitted to the Interstate TRS Fund (Fund) each month for payment. Providers submitting minutes for payment from the Fund must measure the conversation time of each call to the nearest second, and when the time for such calls is expressed in decimal form, the relay provider must round the time to the nearest tenth of a minute, as set forth below.

Specifically, when recording the actual conversation time of each completed call, the decimal representation of the seconds should extend to the tenth of a minute; providers may round up only in those circumstances where the number in the hundredth place is 5 or greater. If the number in the hundredth place is not 5 or greater, then the number in the tenth place remains the same.

For example, if the actual conversation time is 34 minutes and 46 seconds, the decimal expression to the hundredth place is 34.76. Because the number in the hundredth place (6) is 5 or greater, the number in the tenth place (7) may be rounded up to 8. Therefore, the actual conversation time, rounded to the nearest one-tenth of a minute and used to calculate total monthly conversation minutes, is 34.8 minutes. A contrasting example, where rounding up is not appropriate, is a situation where the actual conversation time is 34 minutes and 32 seconds. For such a call, the decimal expression to the hundredth place is 34.53. Because the number in the hundredth place (3) is less than 5, the number in the tenth place (5) remains the same and the actual conversation time used to calculate total monthly conversation minutes is 34.5 minutes.

In determining total monthly conversation minutes reported to NECA, the total conversation minutes of all eligible calls (each measured to the tenth of a minute, as described above) are added together. That total is then rounded to the nearest whole number (full minute) under the same principle set forth above. For instance, if the total number of conversation minutes for all calls in a particular month is 123,456.8, that figure would be rounded up to 123,457. Similarly, if the figure was 123,456.4, the figure would be rounded down to 123,456.

For the past several years, NECA has provided TRS providers with instructions for reporting minutes. *Interstate Telecommunications Relay Service (TRS) Fund Instructions for Reporting Minutes Monthly* (August 2004) (Reporting Instructions). In the instructions, National Exchange Carrier Association (NECA), the Fund Administrator, advises that the actual conversation time of each completed call, in minutes/seconds or minutes/tenths, should be recorded during the month, and at the end of the month, the provider should total the minutes/seconds or minutes/tenths for each type of call by center and round to the nearest whole number. The *Reporting Instructions* provide examples of how these rounding principles apply in determining total monthly minutes, stating that: (1) A monthly total of 180,095 minutes and 41 seconds, or 180,095.68 minutes, would be rounded up to 180,096; and (2) a monthly total of 2,437 minutes and 15 seconds, or 2,437.25 minutes, would be rounded down to 2,437.

The examples set forth herein are consistent with these instructions and standard rounding principles.

Therefore, unless and until directed otherwise, TRS providers should follow the guidelines provided in NECA's Reporting Instructions and in this document.

Federal Communications Commission.

Suzanne M. Tetreault,

Acting Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. E9–13718 Filed 6–11–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Release of Exposure Draft of Technical Bulletin 2009–1: Deferral of the Effective Date of Technical Bulletin 2006–1, Recognition and Measurement of Asbestos-Related Cleanup Costs

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of Release of Exposure Draft of Technical Bulletin 2009–1, Deferral of the Effective Date of Technical Bulletin 2006–1, Recognition and Measurement of Asbestos-Related Cleanup Costs.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in April 2004, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has released the Exposure Draft of Technical Bulletin 2009–1, Deferral of the Effective Date of Technical Bulletin 2006–1, Recognition and Measurement of Asbestos-Related Cleanup Costs.

The purpose of this proposed technical bulletin is to defer the effective date of Technical Bulletin 2006–1, Recognition and Measurement of Asbestos-Related Cleanup Costs, for two years.

The Technical Bulletin 2009–1 Exposure Draft is available on the FASAB home page *http://www.fasab.gov/exposure.html.* Copies

can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by July 17, 2009, and should be sent to: Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, 441 G Street, NW., Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act, Public Law 92–463.

Dated: June 8, 2009.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. E9–13803 Filed 6–11–09; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Notice of Updated Systems of Records; Correction

AGENCY: General Services Administration.

ACTION: Correction.

SUMMARY: GSA is issuing a correction to the notice GSA/GOVT–4 Contracted Travel Services Program. The document contained an incorrect acronym. GSA reviewed its Privacy Act systems to ensure that they are relevant, necessary, accurate, up-to-date, covered by the appropriate legal or regulatory authority, and compliant with OMB M–07–16.

DATES: Effective June 12, 2009.

FOR FURTHER INFORMATION CONTACT: Call or e-mail the GSA Privacy Act Officer: telephone 202–208–1317; e-mail *gsa.privacyact@gsa.gov.*

ADDRESSES: GSA Privacy Act Officer (CIB), General Services Administration, 1800 F Street NW., Washington, DC 20405.

Correction:

In the **Federal Register** Notice of June 3, 2009, in FR Doc. E9–12951, on page 26700, in the third column, under the heading ''CATEGORIES OF RECORDS IN THE SYSTEM'' remove ''DHA'' and add ''DHS'' in its place.

Dated: June 8, 2009.

Kim Mott,

Privacy Act Officer.

[FR Doc. E9–13830 Filed 6–11–09; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Projects for Assistance in Transition From Homelessness (PATH) Program Annual Report (OMB No. 0930–0205)—Revision

The Center for Mental Health Services awards grants each fiscal year to each of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands from allotments authorized under the PATH program established by Public Law 101–645, 42 U.S.C. 290cc–21 *et seq.,* the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 (section 521 *et seq.* of the Public Health Service (PHS) Act). Section 522 of the PHS Act requires that the grantee States and Territories must expend their payments under the Act solely for making grants to political subdivisions of the State, and to non-profit private entities (including community-based veterans' organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of section 524 of the PHS Act.

This submission is for a revision of the current approval of the annual grantee reporting requirements. Section 528 of the PHS Act specifies that not later than January 31 of each fiscal year, a funded entity will prepare and submit a report in such form and containing such information as is determined necessary for securing a record and description of the purposes for which amounts received under section 521 were expended during the preceding fiscal year and of the recipients of such amounts and determining whether such amounts were expended in accordance with statutory provisions.

The proposed changes to the PATH Annual Report Survey are as follows:

- Reporting on all persons served with PATH Federal and matching State funds.

Additional Optional Questions:

Table C

- The number of Enrolled consumers placed into housing (Transitional, Supportive, or Permanent).
- The number of Enrolled consumers who were assisted with successfully obtaining income benefits (SSI, SSDI, VA, etc.).
- The number of Enrolled consumers who were assisted with successfully obtaining or increasing their earned income (employment).
- The number of Enrolled consumers who were assisted with successfully obtaining medical insurance or coverage plans (Medicaid, Medicare, and/or State/local plans).
- The number of Enrolled consumers who were assisted with successfully obtaining primary medical care.

The estimated annual burden for these reporting requirements is summarized in the table below.

Respondents	Number of respondents	Responses per respondent	Burden per response (hrs.)	Total burden
States	56	1	26	1,456
Local provider agencies	480	1	31	14,880
Totals	536			16,336

Written comments and recommendations concerning the proposed information collection should be sent by July 13, 2009 to: SAMHSA Desk Officer, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service,

respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: June 4, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–13841 Filed 6–11–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0137]

Mary E. Sawaya a.k.a. Marty Sawaya; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Dr. Mary E. Sawaya a.k.a. Marty Sawaya (Dr. Sawaya) from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Sawaya was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product, and conduct otherwise relating to the regulation of a drug product under the act. After being given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation, Dr. Sawaya failed to request a hearing. Dr. Sawaya's failure to request a hearing constitutes a waiver of her right to a hearing concerning this action.

DATES: This order is effective June 12, 2009.

ADDRESSES: Submit applications for special termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Hummel, Sr., Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–632–6845.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(A) of the act (21 U.S.C. 335a(a)(2)(A)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of any drug product. Section 306(a)(2)(B) of the act requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of any drug product under the act.

On December 11, 2003, the U.S. District Court for the Middle District of Florida accepted Dr. Mary E. Sawaya's plea of guilty and convicted her of one count of making a false statement to a Federal agency, a Federal felony offense under 18 U.S.C. 1001. This offense was committed when Dr. Sawaya created a medical license by obtaining a copy of a colleague's Florida medical license, altered that license using a photocopy machine to reflect that the license was issued in her name, and submitted the false and fraudulent Florida medical license to the sponsor of a clinical trial, for which she was a clinical investigator. The sponsor submitted that license to FDA as part of the drug approval process. When the false license was due to expire, Dr. Sawaya once again created a false and fraudulent medical license with a different expiration date and submitted that license to the clinical trial sponsor.

As a result of this conviction, FDA sent Dr. Sawaya by certified mail on November 26, 2008, a notice proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(A) and (a)(2)(B) of the act, that Dr. Sawaya was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product, and conduct otherwise relating to the regulation of a drug product under the act. The proposal also offered Dr. Sawaya an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Dr. Sawaya did not request a hearing and has, therefore, waived her opportunity for a hearing and any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Acting Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(A) and (a)(2)(B) of the act, and under authority delegated to her, finds that Dr. Sawaya has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product and conduct otherwise relating to the regulation of a drug product under the act.

As a result of the foregoing finding, Dr. Sawaya is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**). (See sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd)).) Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Dr. Sawaya, in any capacity, during Dr. Sawaya's permanent debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Dr. Sawaya , during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Sawaya during her period of debarment (section 306(c)(1)(B) of the act).

Any application by Dr. Sawaya for special termination of debarment under section 306(d)(4) of the act should be identified with Docket No. FDA–2008–N–0137 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 1, 2009.

Alyson L. Saben,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. E9–13929 Filed 6–11–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2007–N–0377] (formerly Docket No. 2007N–0299)

Allyn M. Norman; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) debarring Dr. Allyn M. Norman for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Norman was convicted of a misdemeanor under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product or otherwise relating to the regulation of drug products under the act, and that the type of conduct that served as the basis for the conviction undermines the process for the regulation of drugs. Dr. Norman failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

DATES: This order is effective June 12, 2009.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Hummel, Sr., Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–632–6845.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 2002, the U.S. District Court for the Western District of New York accepted Dr. Norman's plea of guilty to one count of failure to maintain adequate and accurate records relating to the use of investigational new drugs, a Federal misdemeanor offense under 21 U.S.C. 331(e) and 333(a)(1). On February 5, 2003, the U.S. District Court for the Western District of New York entered a judgment of conviction against Dr. Norman for this offense.

The basis of this conviction was Dr. Norman's creation and submission of falsified study data in required reports to the sponsor of an investigational new drug application (IND) study, in violation of section 505(i) of the act (21 U.S.C. 355(i)) and 21 CFR 312.62(a) and (b). Dr. Norman failed to conduct the study according to the approved protocol, reported the enrollment of nonexistent subjects in the study, and fabricated all of the pertinent study records associated with these subjects. Dr. Norman's failure to comply with the requirements of the act and FDA regulations concerning the conduct of an IND study is the type of conduct that undermines confidence in the results of clinical studies that are relied on in the approval process for drug products.

As a result of Dr. Norman's conviction, FDA sent to Dr. Norman, by certified letter on October 10, 2007, a proposal to debar Dr. Norman for 5 years from providing services in any capacity to a person that has an approved or pending drug product application. The letter also offered Dr. Norman notice of an opportunity for a hearing on the proposal in accordance with section 306 of the act (21 U.S.C. 335a) and 21 CFR part 12. FDA based the debarment proposal on the findings, under section 306(b)(2)(B)(i)(I) of the act, that Dr. Norman was convicted of a misdemeanor under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product or otherwise relating to the regulation of drug products under the act, and that the type of conduct which served as the basis for the conviction undermines the process for the regulation of drugs. The letter notified Dr. Norman that he had 30 days from the date of receipt of the letter to request a hearing. Dr. Norman did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Acting Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(b)(2)(B)(i)(I) of the act and under authority delegated to the Acting Director (Staff Manual Guide 1410.35), finds that Dr. Allyn M. Norman has been convicted of a misdemeanor under Federal law for failure to maintain adequate and accurate records relating to the use of investigational new drugs, that Dr. Norman's conduct relates to the development or approval, including the process for development or approval, of a drug product or otherwise relates to the regulation of drug products under the act, and that Dr. Norman's conduct, which served as the basis for his conviction, is the type of conduct that undermines the process for the regulation of drugs.

As a result of the foregoing findings, Dr. Norman is debarred for 5 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (see sections 306(c)(1)(B) and (c)(2)(A)(iii) and 201(dd) of the act (21 U.S.C. 321(dd)). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Norman, in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 355b(a)(6))). If Dr. Norman, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Norman during his period of debarment.

Any application by Dr. Norman for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. FDA–2007–N–0377 (formerly Docket No. 2007N–0299) and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 4, 2009.

Alyson L. Saben,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. E9–13766 Filed 6–11–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Progression of Gestational Diabetes to Type 2 Diabetes.

Date: July 6, 2009.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To provide concept review of proposed concept review.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13759 Filed 6–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Extramural Associates Research Development Award (EARDA).

Date: July 9, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13760 Filed 6–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; ARRA P30 Faculty Development Grants.

Date: June 22, 2009.

Time: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin H. Goldrosen, PhD, Director, Office of Scientific Review, National Center for Complementary and Alternative Medicine, National Institutes of Health, 6707 Democracy Blvd., Ste., 106, Bethesda, MD 20892–5475, (301) 451–6331, *goldrosm@mail.nih.gov.*

This notice is being published less than 15 days prior to meeting due to scheduling conflicts.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; ARRA SEP 3P01/3R01.

Date: July 16, 2009.

Time: 12 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martina Schmidt, PhD, Scientific Review Officer, Office of Scientific Review, National Center for Complementary & Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–594–3456, *schmidma@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.701, ARRA Related Biomedical Research and Research Support Awards.; 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: June 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13761 Filed 6–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; ARRA—The Biomarkers of Autism at 12 Months: From Brain Overgrowth to Genes.

Date: June 18, 2009.

Time: 8 p.m. to 9 p.m.

Agenda: To review and evaluate grant applications.

Place: Mandarin Oriental Hotel, 1330 Maryland Avenue, SW., Washington, DC 20024.

Contact Person: David M. Armstrong, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center/ Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; ARRA Transcriptional Atlas of Human Brain Development.

Date: June 24, 2009.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Rebecca C. Steiner, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6149, MSC 9608, Bethesda, MD 20892–9608. 301–443–4525. *steinerr@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Suicide Prevention in Emergency Departments (U01).

Date: June 25, 2009.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Aileen Schulte, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–1225, *aschulte@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; Mental Health Needs of Returning Veterans.

Date: July 2, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Serena P. Chu, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20852–9609. 301–443–0004. *sechu@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel; NIMH Novel Interventions RFA review.

Date: July 15, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Megan Libbey, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13762 Filed 6–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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 Cancer Institute Special Emphasis Panel; NCI–ARRA Competitive Revisions-Clinical, Targeted Therapy, Marker Discovery.

Date: July 22–23, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel and Conference Center, Bethesda, MD.

Contact Person: Wlodek Lopaczynski, MD, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8131, Bethesda, MD 20892, 301–594–1402, *lopacw@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: June 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13768 Filed 6–11–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences; Special Emphasis Panel; ZGM1 MORE–1 BB.

Date: July 9, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building 45, Room 3AN12F, Bethesda, MD 20892, 301–594–2881, *sunshinh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88,

Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 4, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–13756 Filed 6–11–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

Name	License No.	Issuing port
Fermin Cuza	10966	Los Angeles.
Erwin Rautenberg	03280	Los Angeles.
Hans Leuenberger	04082	Los Angeles.
Gerhard F. Carl	04143	Philadelphia.

Dated: June 5, 2009.

Daniel Baldwin,

Assistant Commissioner, Office of International Trade.

[FR Doc. E9–13835 Filed 6–11–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0393]

Certificate of Alternative Compliance for the Crew Boat MR ZACHARY

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the crew boat MR ZACHARY as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on May 3, 2009.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0393 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The crew boat MR ZACHARY will be used for offshore supply operations. Full compliance with 72 COLREGS and the Inland Rules Act will hinder the vessel's ability to maneuver within close proximity of offshore platforms. Due to the design of the vessel it would be difficult and impractical to build a supporting structure that would put the side lights within 3.1′ from the greatest breadth of the Vessel, as required by Annex I, paragraph 3(b) of the 72 COLREGS and Annex I, Section 84.05(b), of the Inland Rules Act. Compliance with the rule would cause the lights on the crew boat MR ZACHARY to be in a location which will be highly susceptible to damage from offshore platforms. The crew boat MR ZACHARY cannot comply fully with lighting requirements as set out in international regulations without interfering with the special function of the vessel (33 U.S.C. 1605(c); 33 CFR 81.18).

Locating the side lights 6′2″ inboard from the greatest breadth of the vessel on the pilot house will provide a shelter location for the lights and allow maneuvering within close proximity to offshore platforms. In addition, the forward masthead light may be located on the top forward portion of the pilothouse 18′-2″ above the hull. Placing the forward masthead light at the height as required by Annex I, paragraph 2(a) of the 72 COLREGS, and Annex I, Section 84.03(a) of the Inland Rules Act, would result in a masthead light location highly susceptible to damage when working in close proximity to offshore platforms. Furthermore, the horizontal distance between the forward and aft masthead lights may be 16′-9 15/16″. Placing the aft masthead light at the horizontal distance from the forward masthead light as required by Annex I, paragraph 3(a) of the 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act, would result in an aft masthead light location directly over the aft cargo deck where it would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the placement of the side lights to deviate from requirements set forth in Annex I, paragraph 3(b) of 72 COLREGS, and Annex I, paragraph 84.05(b) of the Inland Rules Act. In addition the Certificate of Alternative Compliance allows for the vertical placement of the forward masthead light to deviate from requirements set forth in Annex I, paragraph 2(a), and Annex I, Section 84.03(a) of the Inland Rules Act. Furthermore, the Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: May 5, 2009.

Verne B. Gifford,

Captain, U.S. Coast Guard, Chief, Prevention Division, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. E9–13777 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2009–0431]

Certificate of Alternative Compliance for the Offshore Supply Vessel BLN HULL 563

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard announces that a Certificate of Alternative Compliance was issued for the offshore supply vessel BLN HULL 563 as required by 33 U.S.C. 1605(c) and 33 CFR 81.18.

DATES: The Certificate of Alternative Compliance was issued on May 13, 2009.

ADDRESSES: The docket for this notice is available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation,

West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0431 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call CWO2 David Mauldin, District Eight, Prevention Branch, U.S. Coast Guard, telephone 504–671–2153. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The offshore supply vessel BLN HULL 563 will be used for offshore supply operations. Full compliance with 72 COLREGS and Inland Rules Act will hinder the vessel's ability to maneuver within close proximity of offshore platforms. Due to the design of the vessel, it would be difficult and impractical to build a supporting structure that would put the side lights within 5.6′ from the greatest breadth of the vessel, as required by Annex I, paragraph 3(b) of the 72 COLREGS and Annex I, Section 84.05(b) of the Inland Rules Act. Compliance with the rule would cause the lights on the supply vessel BLN HULL 563 to be in a location which would be highly susceptible to damage from offshore platforms. The supply vessel BLN HULL 563 cannot comply fully with lighting requirements as set out in international regulations without interfering with the special function of the vessel (33 U.S.C. 1605(c); 33 CFR 81.18).

Locating the sidelights 12′-4¼″ inboard from the greatest breadth of the vessel on the pilot house will provide a shelter location for the lights and allow maneuvering within close proximity to offshore platforms. In addition, the forward masthead light may be located on the top forward portion of the pilothouse 38′-2¼″ above the hull. Placing the forward masthead light at the height required by Annex I, paragraph 2(a) of the 72 COLREGS would result in a masthead light location highly susceptible to damage when working in close proximity to offshore platforms. Furthermore, the horizontal distance between the forward and aft masthead lights may be 18′-10$^{9}/_{16}$″. Placing the aft masthead light at the horizontal distance from the forward masthead light, as required by Annex I, paragraph 3(a) of the 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act, would result in an aft masthead light location directly over the aft cargo deck where it would interfere with loading and unloading operations. Lastly, the aft anchor light may be placed 25′-1$^{5}/_{16}$″ off centerline to the starboard side of the vessel, just forward of the stern. Placing the aft anchor light directly over the aft cargo deck would interfere with loading and unloading operations.

The Certificate of Alternative Compliance allows for the placement of the sidelights to deviate from requirements set forth in Annex I, paragraph 3(b) of 72 COLREGS, and Annex I, paragraph 84.05(b) of the Inland Rules Act. In addition, the Certificate of Alternative Compliance allows for the vertical placement of the forward masthead light to deviate from requirements set forth in Annex I, paragraph 2(a) of 72 COLREGS. Furthermore, the Certificate of Alternative Compliance allows for the horizontal separation of the forward and aft masthead lights to deviate from the requirements of Annex I, paragraph 3(a) of 72 COLREGS, and Annex I, Section 84.05(a) of the Inland Rules Act. Lastly, the Certificate of Alternative Compliance allows for the placement of the aft anchor light to deviate from the requirements of Rule 30(a)(ii) of 72 COLREGS and Rule 30(a)(ii) of the Inland Rules Act.

This notice is issued under authority of 33 U.S.C. 1605(c), and 33 CFR 81.18.

Dated: May 15, 2009.

Verne B. Gifford,

Captain, U.S. Coast Guard, By Direction of the Commander, Eighth Coast Guard District.

[FR Doc. E9–13773 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Domestic Interested Party Petitioner's Contesting of Classification Determination

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of petitioner's desire to contest classification determination.

SUMMARY: On August 4, 2006, a domestic manufacturer of glass preforms for optical fibers (''optical glass preforms'') filed a domestic interested party petition in accordance with the procedures of section 516 of the Tariff Act of 1930, as amended, and 19 CFR Part 175 regarding the tariff classification of imported optical glass preforms. The petition challenged CBP's classification of optical glass preforms under subheading 7002.20.10, Harmonized Tariff Schedule of the United States (HTSUS), and requested CBP to reclassify all optical glass preforms under subheading 7020.00.60, HTSUS, as other articles of glass, or, alternatively, under 9001.10.00, HTSUS, as unfinished optical fibers. On July 14, 2008, Customs and Border Protection (CBP) denied the petition and affirmed its decision that optical glass preforms are classified in subheading 7002.20.10, HTSUS, as glass rods of fused quartz or other fused silica, unworked. In accordance with 19 CFR 175.23 and 175.24, CBP is providing notice of its classification decision and is also giving notice of the receipt of petitioner's desire to contest this decision in court.

DATES: June 12, 2009.

FOR FURTHER INFORMATION CONTACT: Allyson R. Mattanah, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325–0029.

SUPPLEMENTARY INFORMATION:

Background

This document concerns the classification of imported optical glass preforms by Customs and Border Protection (CBP) and the desire of a domestic interested party to contest CBP's classification decision.

Classification of Optical Glass Preforms

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRIs taken in order. The Explanatory Notes to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

Optical fibers (also known as fiber optics) are long, thin strands of pure glass about the diameter of a human hair. They are arranged in bundles called optical cables and used to transmit light signals over long

distances. The light travels through the core by constantly bouncing from mirror-lined walls, known as the cladding. Because the cladding does not absorb any light from the core, the light wave can travel great distances.

Upon importation, glass preforms for optical fibers (''optical glass preforms'') consist of glass rods of various sizes and dimensions from which glass optical fiber is fabricated. They are produced by a two-step process. In the first step, called Vapor Axial Deposition, extremely fine dusts of silica tetrachloride fuse into a rod when drawn through an annealing furnace, creating the core layer of the optical glass preform. In the second step, the cladding layer is added by fusing a layer of silica dioxide powder to the outside of the core rod. The result is that the core and cladding of the optical glass preform is made of visibly different layers of glass because of their different refractive indexes.

Heading 7002, HTSUS, provides for ''Glass in balls (other than microspheres of heading 7018), rods or tubes, unworked''. This is an *eo nomine* provision that covers unworked glass rods. Subheading 7002.20.10, HTSUS, provides for ''Rods: of fused quartz or other fused silica''. The 2009 column one, general rate of duty for this provision is free.

Heading 7020, HTSUS, provides for ''Other articles of glass'' and subheading 7020.00.60, HTSUS, provides for ''Other''. This is a basket provision that provides for articles of glass not otherwise covered in Chapter 70 of the HTSUS. The 2009 column one, general rate of duty under this provision is 5 percent *ad valorem.*

Heading 9001, HTSUS, provides for ''Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked''. Subheading 9001.10.00, HTSUS, provides for ''Optical fibers, optical fiber bundles and cables, and other''. The 2009 column one, general rate of duty for this provision is 6.7 percent *ad valorem.*

On April 21, 2006, CBP issued Headquarters Ruling (HQ) 967058 to Lucent Technologies regarding optical glass preforms. In this ruling, CBP concluded that the proper classification is under subheading 7002.20.10, HTSUS. CBP found that because the manufacture of optical glass preforms is a process that requires multiple steps, the articles are not complete until the desired layers are created and form a pure, solid whole. Therefore, the ''working'' of glass articles occurs after their creation.

Filing of Domestic Interested Party Petition

On August 4th, 2006, Corning, a manufacturer of optical glass preforms in the U.S., filed a domestic interested party petition, in accordance with section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that CBP reclassify imported optical glass preforms in either of subheadings 7020.00.60 or 9001.10.00, HTSUS. Corning's challenge of CBP's classification of these optical glass preforms turned on the issue of whether the different glass refractions evidence the existence of a glass core rod which has been ''worked'' by the addition to it of a layer of cladding glass.

On March 28, 2007, in accordance with 19 CFR 175.21, CBP published a Notice of Receipt of Domestic Interested Party Petition filed by petitioner Corning in the **Federal Register** (72 FR 14603). The notice invited written comments on the petition from interested parties until May 27, 2007. Two comments were received in response to this notice, both of which concurred with CBP's position that the optical glass preforms described in HQ 967058 are classified in subheading 7002.20.10, HTSUS.

Decision on Petition and Notice of Petitioner's Desire To Contest

On July 14, 2008, CBP issued HQ W968361, denying Corning's Domestic Interested Party Petition and satisfying the requirements of 19 CFR 175.22(b) by providing the petitioner with notification that the classification of the imported optical glass preforms was found to be correct. CBP classified the optical glass preforms based on its finding that these goods are solid multi-layered rods made from fused silica that are unworked in their condition as imported. This letter officially notified the petitioner that ''CBP correctly classified the glass preform described in HQ 967058, by application of GRI 1, under heading 7002, HTSUS, and specifically under subheading 7002.20.1000, as glass rods, unworked, of fused quartz or other fused silica.''

On August 6, 2008, Corning timely provided CBP with notice of its desire to contest HQ W968361 in the United States Court of International Trade and its desire to contest the liquidation of entries of optical glass preforms at the Port of Charlotte, North Carolina in accordance with 19 U.S.C. 1516(c) and 19 CFR 175.23.

As required by both the applicable statute and regulations, CBP is in receipt of Corning's letter, dated August 6, 2008, establishing the timely notice of its desire to contest in the Court of International Trade CBP's decision letter of HQ W968361 which held that the classification of imported optical glass preforms is under subheading 7002.20.10, HTSUS, as glass rods, unworked, of fused quartz or other fused silica.

Authority: This notice is published in accordance with 19 U.S.C. 1516 and sections 175.23 and 175.24 of the CBP Regulations (19 CFR 175.23–24).

Dated: June 9, 2009.

Jayson P. Ahern,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E9–13938 Filed 6–11–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5330–D–01]

Delegation of Authority for Homelessness Prevention and Rapid Re-Housing Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: In this notice, the Secretary delegates to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development the authority necessary to implement the Homelessness Prevention and Rapid Re-Housing Program (HPRP) which was established under the Homelessness Prevention Fund heading of Division A, Title XII of the American Recovery and Reinvestment Act of 2009.

DATES: *Effective Date:* June 5, 2009.

FOR FURTHER INFORMATION CONTACT: Ann Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, (202) 708–4300. (This is not a toll-free number.) For hearing/speech-impaired individual, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION: This notice states the scope of authority given to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant

Secretary for Community Planning and Development for HPRP. In this document, the Secretary delegates authority to implement HPRP, as specified below, and in accordance with applicable law, rule and departmental policy, to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development. Accordingly, the Secretary delegates authority as follows:

Section A. Authority Delegated

The Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development are delegated all power and authority of the Secretary to implement HPRP.

Section B. Authority Excepted

The authority delegated under Section A to the Assistant Secretary for Community Planning and Development and the General Deputy Assistant Secretary for Community Planning and Development does not include the power to sue and be sued. Furthermore, the authority delegated under Section A to the General Deputy Assistant Secretary for Community Planning and Development does not include the authority to waive rules and regulations.

Section C. Authority to Redelegate

The Assistant Secretary for Community Planning and Development may redelegate to employees of the Department any of the power and authority delegated under Section A, and not excepted under Section B of this delegation. However, the Assistant Secretary for Community Planning and Development is not authorized to redelegate the authority to issue or waive rules and regulations.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: June 5, 2009.

Shaun Donovan,

Secretary of Housing and Urban Development.

[FR Doc. E9–13765 Filed 6–11–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–22]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Army:* Ms. Veronica Rines, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, DAIM–ZS, Room 8536, 2511 Jefferson Davis Hwy, Arlington, VA 22202; (703) 601–2545; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Navy:* Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–

5065; (202) 685–9305; (These are not toll-free numbers).

Dated: June 4, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

Title V, Federal Surplus Property Program Federal Register Report for 06/12/2009

Suitable/Available Properties

Building

Idaho

Bldg. CF–602
Idaho National Lab
Idaho Falls ID 83415
Landholding Agency: GSA
Property Number: 54200920012
Status: Excess
GSA Number: 9–B–ID–569
Comments: 4224 sq. ft., presence of asbestos/lead paint, off-site use only

Bldg. ARA–617
Idaho National Lab
Idaho Falls ID 83415
Landholding Agency: GSA
Property Number: 54200920013
Status: Excess
GSA Number: 9–B–ID–571
Comments: 1631 sq. ft., needs repair, presence of asbestos/possible contamination, off-site use only

Bldg. PBF–619
Idaho National Lab
Idaho Falls ID 83415
Landholding Agency: GSA
Property Number: 54200920014
Status: Excess
GSA Number: 9–B–ID–568
Comments: 5704 sq. ft., needs repair, presence of asbestos/lead paint, possible contamination, offsite use only

Maryland

Bldg. 02483
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200920025
Status: Unutilized
Comments: 1360 sq. ft., most recent use—heat plt bldg., off-site use only

Bldg. 03320
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200920026
Status: Unutilized
Comments: 10,600 sq. ft., most recent use—admin., off-site use only

Oklahoma

Bldgs. 01509, 01510
Fort Sill
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200920060
Status: Unutilized
Comments: various sq. ft., most recent use—vehicle maint. shop, off-site use only

4 Bldgs.
Fort Sill
2591, 2593, 2595, 2604
Lawton OK 73501
Landholding Agency: Army
Property Number: 21200920061
Status: Unutilized
Comments: Various sq. ft., most recent use—classroom/admin, off-site use only

Tennessee

Bldg. 00001
Fort Campbell
Christian TN 42223
Landholding Agency: Army
Property Number: 21200920027
Status: Unutilized
Comments: Double wide trailer, off-site use only

NOAA Admin. Bldg.
456 S. Illinois Ave.
Oak Ridge TN 38730
Landholding Agency: GSA
Property Number: 54200920015
Status: Excess
GSA Number: 4–B–TN–0664–AA
Comments: 15,955 sq. ft., most recent use—office/storage/lab

Unsuitable Properties

Building

Alabama

9 Bldgs.
Anniston Army Depot
Calhoun AL 36201
Landholding Agency: Army
Property Number: 21200920029
Status: Unutilized
Directions: 43, 44, 146, 164, 605, 671, 678, 679, 701
Reasons: Extensive deterioration

Alaska

Bldg. 47435
Fort Richardson
Ft. Richardson AK 99505
Landholding Agency: Army
Property Number: 21200920028
Status: Unutilized
Reasons: Extensive deterioration

Arizona

Bldgs. 30025, 43003
Fort Huachuca
Cochise AZ 85613
Landholding Agency: Army
Property Number: 21200920030
Status: Excess
Reasons: Extensive deterioration

California

Bldgs. 00040, 00412
SHARPE
Lathrop CA 95231
Landholding Agency: Army
Property Number: 21200920031
Status: Underutilized
Reasons: Secured Area

Florida

7 Bldgs.
Naval Air Station
Pensacola FL 32508
Landholding Agency: Navy
Property Number: 77200920029
Status: Unutilized
Directions: 706, 707, 1040, 1524, 1754, 1957, 3211
Reasons: Secured Area, Extensive deterioration

Georgia

Bldgs. 1608, 8559
Fort Benning
Ft. Benning GA 31905
Landholding Agency: Army
Property Number: 21200920032
Status: Excess
Reasons: Extensive deterioration

Bldgs. 1305, 1306, 1307, 1308
Hunter Army Airfield
Chatham GA 31409
Landholding Agency: Army
Property Number: 21200920033
Status: Excess
Reasons: Extensive deterioration

Bldgs. 728, 729
Fort Stewart
Liberty GA 31314
Landholding Agency: Army
Property Number: 21200920034
Status: Excess
Reasons: Secured Area

Hawaii

Bldgs. 00005, 00006
TANAPAG USARC
Tanapag, HI
Landholding Agency: Army
Property Number: 21200920035
Status: Unutilized
Reasons: Extensive deterioration

Illinois

Bldgs. 00065
Rock Island Arsenal
Rock Island IL 61299
Landholding Agency: Army
Property Number: 21200920037
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Within 2000 ft. of flammable or explosive material, Contamination

Iowa

Bldgs. TD010, TD020
Camp Dodge
Johnson IA 50131
Landholding Agency: Army
Property Number: 21200920036
Status: Excess
Reasons: Extensive deterioration

Kansas

Bldgs. 680, 681, 682
Fort Riley
Geary KS 66442
Landholding Agency: Army
Property Number: 21200920038
Status: Underutilized
Reasons: Secured Area

Bldgs. 7504, 7506, 7507
Fort Riley
Geary KS 66442
Landholding Agency: Army
Property Number: 21200920039
Status: Unutilized
Reasons: Extensive deterioration

Kentucky

6 Bldgs.
Fort Campbell
Christian KY 42223
Landholding Agency: Army
Property Number: 21200920040
Status: Unutilized
Directions: 01108, 02207, 02330, A2303, 02541, 02572
Reasons: Extensive deterioration

8 Bldgs.

Fort Campbell
Christian KY 42223
Landholding Agency: Army
Property Number: 21200920041
Status: Unutilized
Directions: 02931, A2931, 02932, A2932, B2932, C2932, 02933, A2933
Reasons: Extensive deterioration

10 Bldgs.
Fort Campbell
Christian KY 42223
Landholding Agency: Army
Property Number: 21200920042
Status: Unutilized
Directions: 02934, A2934, B2934, 02935, A2935, 02936, 02937, 02938, 02939, 02941
Reasons: Extensive deterioration

Kentucky

4 Bldgs.
Fort Campbell
Christian KY 42223
Landholding Agency: Army
Property Number: 21200920043
Status: Unutilized
Directions: 06091, 6142, 07223, 07543
Reasons: Extensive deterioration

Maryland

6 Bldgs.
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200920044
Status: Unutilized
Directions: 00086, 0400C, 01050, 01087, 01088, 01199
Reasons: Extensive deterioration

8 Bldgs.
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200920045
Status: Unutilized
Directions: 02201, E3315, 04306, 04307, 04308, 04309, E5117, E5865
Reasons: Extensive deterioration

5 Bldgs.
National Naval Medical Ctr
Bethesda MD
Landholding Agency: Navy
Property Number: 77200920030
Status: Unutilized
Directions: 23, 29, 139, 176, 219
Reasons: Secured Area

Missouri

14 Bldgs.
Fort Leonard Wood
Pulaski MO 65473
Landholding Agency: Army
Property Number: 21200920048
Status: Unutilized
Directions: 2831, 2832, 2833, 2834, 2835, 2836, 2837, 2838, 2839, 2840, 2843, 2844, 2845, 4970
Reasons: Secured Area

New Jersey

Bldgs. 9050D, 59851
Fort Dix
Burlington NJ 08640
Landholding Agency: Army
Property Number: 21200920054
Status: Unutilized
Reasons: Extensive deterioration

New Mexico

13 Bldgs.
Fort Wingate Army Depot
Gallup NM 87301
Landholding Agency: Army
Property Number: 21200920055
Status: Unutilized
Directions: 231, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 518, 519
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

7 Bldgs.
Fort Wingate Army Depot
Gallup NM 87301
Landholding Agency: Army
Property Number: 21200920056
Status: Unutilized
Directions: 520, 522, 524, 526, 527, 528, 529
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

8 Bldgs.
Fort Wingate Army Depot
Gallup NM 87301
Landholding Agency: Army
Property Number: 21200920057
Status: Unutilized
Directions: 530, 535, 536, 537, 540, 541, 542, 542A
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 551, 551B, 600
Fort Wingate Army Depot
Gallup NM 87301
Landholding Agency: Army
Property Number: 21200920058
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

North Carolina

6 Bldgs.
Fort Bragg
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200920049
Status: Unutilized
Directions: A1355, A2029, A2031, A2032, A2144, P2352
Reasons: Secured Area, Extensive deterioration

8 Bldgs.
Fort Bragg
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200920050
Status: Unutilized
Directions: C4125, 09045, 11460, 22809, 23212, 23810, 30844, 55010
Reasons: Extensive deterioration, Secured Area

11 Bldgs.
Fort Bragg
Camp Mackall
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200920051
Status: Unutilized
Directions: T2455, T2546, T2547, T2653, T2654, T2655, T2656, T2853, T2854, T2855, T2856
Reasons: Extensive deterioration, Secured Area

9 Bldgs.
Fort Bragg
Camp Mackall
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200920052
Status: Unutilized
Directions: T3038, T3153, T3154, T3162, T3252, T3253, T3255, T3259, T3353
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Simmons Army Airfield
Cumberland NC 28310
Landholding Agency: Army
Property Number: 21200920053
Status: Unutilized
Directions: P2455, P2457, P2542, P2757, P2852
Reasons: Secured Area, Extensive deterioration

Ohio

Bldg. 27 (1–7)
Defense Supply Center
Columbus OH 43216
Landholding Agency: Army
Property Number: 21200920059
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Oklahoma

Bldg. 00718
McAlester Army Ammo Plant
McAlester OK 74501
Landholding Agency: Army
Property Number: 21200920062
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Pennsylvania

5 Bldgs.
Letterkenny Army Depot
Chambersburg PA 17201
Landholding Agency: Army
Property Number: 21200920063
Status: Unutilized
Directions: 01466, 03231, 03243, 03244, 03245
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
Defense Distrib. Depot
Cumberland PA 17070
Landholding Agency: Army
Property Number: 21200920064
Status: Underutilized
Directions: 00172, 00173, 00174, 00175, 00351
Reasons: Secured Area

Bldg. S0093
Tobyhanna Army Depot
Monroe PA 18466
Landholding Agency: Army
Property Number: 21200920065
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Puerto Rico

Bldg. 1020
Fort Buchanan
Guaynabo PR 00934
Landholding Agency: Army
Property Number: 21200920066
Status: Excess
Reasons: Extensive deterioration

South Carolina

Bldg. 10810
Ft. Jackson
Richland SC 29207
Landholding Agency: Army
Property Number: 21200920067
Status: Excess
Reasons: Secured Area

Tennessee

Bldgs. B0268, J0134
Milan AAP
Gibson TN 38358
Landholding Agency: Army
Property Number: 21200920068
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration, Secured Area

Bldg. 1567
Fort Campbell
Christian TN 42223
Landholding Agency: Army
Property Number: 21200920069
Status: Excess
Reasons: Extensive deterioration

Texas

Bldg. 5817
Fort Bliss
El Paso TX 79916
Landholding Agency: Army
Property Number: 21200920071
Status: Unutilized
Reasons: Extensive deterioration

Virginia

6 Bldgs.
Fort A. P. Hill
Bowling Green VA 22427
Landholding Agency: Army
Property Number: 21200920072
Status: Unutilized
Directions: T0807, T0811, T0815, T0816, T0817, T0818
Reasons: Extensive deterioration

Bldg. 00025
Defense Supply Center
Richmond VA 23297
Landholding Agency: Army
Property Number: 21200920073
Status: Unutilized
Reasons: Secured Area

10 Bldgs.
Fort Eustis
Ft. Eustis VA 23604
Landholding Agency: Army
Property Number: 21200920074
Status: Unutilized
Directions: P0718, P0915, P0916, P0917, P0918, P0919, P0920, P0921, P1043, P1044
Reasons: Extensive deterioration

Bldgs. 735–1, 01001
Radford Army Ammo Plant
Radford VA 24143
Landholding Agency: Army
Property Number: 21200920075
Status: Unutilized
Reasons: Within 2,000 ft. of flammable or explosive material, Secured Area

Bldg. T0514
Fort Story
Ft. Story VA 23459
Landholding Agency: Army
Property Number: 21200920077
Status: Unutilized
Reasons: Extensive deterioration

Washington

4 Bldgs.
Fort Lewis
Pierce WA 98433
Landholding Agency: Army
Property Number: 21200920078
Status: Unutilized
Directions: B0823, B0824, B1220, A1450
Reasons: Extensive deterioration

Wisconsin

Bldgs. 02855, 08033, 08041
Fort McCoy
Monroe WI 54656
Landholding Agency: Army
Property Number: 21200920079
Status: Unutilized
Reasons: Extensive deterioration

Land

Maryland

Landa
Aberdeen Proving Ground
Aberdeen Area/1,500 sq. ft.
Harford MD 21005
Landholding Agency: Army
Property Number: 21200920046
Status: Unutilized
Reasons: Secured Area

Lande
Aberdeen Proving Ground
Harford MD 21005
Landholding Agency: Army
Property Number: 21200920047
Status: Unutilized
Directions: Edgewood Area/1,500 sq. ft./2 acres/34 acres
Reasons: Secured Area

Tennessee

Sites #1, #2, #3
Fort Campbell
Christian TN 42223
Landholding Agency: Army
Property Number: 21200920070
Status: Unutilized
Reasons: Secured Area

Virginia

Site #1
Fort Lee
Prince George VA 23801
Landholding Agency: Army
Property Number: 21200920076
Status: Unutilized
Reasons: Secured Area

[FR Doc. E9–13532 Filed 6–11–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Agency Information Collection; Activities Under OMB Review; Comment Request

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of renewal of a currently approved collection (OMB No. 1006–0023).

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces the Bureau of Reclamation (we, our, or us) has forwarded the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Forms to Determine Compliance by Certain Landholders, 43 CFR part 426, OMB Control Number: 1006–0023.

DATES: OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comments must be received on or before July 13, 2009 to assure maximum consideration.

ADDRESSES: You may send written comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the Desk Officer for the Department of the Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile to (202) 395–5806 or e-mail to *OIRA_DOCKET@omb.eop.gov.* A copy of your comments should also be directed to the Bureau of Reclamation, Attention: 84–53000, P.O. Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: Stephanie McPhee at: (303) 445–2897.

SUPPLEMENTARY INFORMATION:

Title: Forms to Determine Compliance by Certain Landholders, 43 CFR part 426.

Abstract: Identification of limited recipients—Some entities that receive Reclamation irrigation water may believe that they are under the Reclamation Reform Act of 1982 (RRA) forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these entities may in fact have a different RRA forms submittal threshold than what they believe it to be due to the number of natural persons benefiting from each entity and the location of the land held by each entity. In addition, some entities that are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land) may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The information obtained through completion of the Limited Recipient Identification Sheet (Form 7–2536) allows us to establish entities' compliance with Federal reclamation

law. The Limited Recipient Identification Sheet is disbursed at our discretion. The proposed revisions to the Limited Recipient Identification Sheet will be included starting in the 2010 water year, and are designed to facilitate ease of completion.

Trust review—We are required to review and approve all trusts [43 CFR 426.7(b)(2)] in order to ensure trusts meet the regulatory criteria specified in 43 CFR 426.7. Land held in trust generally will be attributed to the beneficiaries of the trust rather than the trustee if the criteria are met. When we become aware of trusts with a relatively small landholding (40 acres or less), we may extend to those trusts the option to complete and submit for our review the Trust Information Sheet (Form 7–2537) instead of actual trust documents. If we find nothing on the completed Trust Information Sheet that would warrant the further investigation of a particular trust, that trustee will not be burdened with submitting trust documents to us for in-depth review. The Trust Information Sheet is disbursed at our discretion. The proposed revisions to the Trust Information Sheet will be included starting in the 2010 water year, and are designed to facilitate ease of completion.

Acreage limitation provisions applicable to public entities—Land farmed by a public entity can be considered exempt from the application of the acreage limitation provisions provided the public entity meets certain criteria pertaining to the revenue generated through the entity's farming activities (43 CFR 426.10 and the Act of July 7, 1970, Pub. L. 91–310). We are required to ascertain whether or not public entities that receive Reclamation irrigation water meet such revenue criteria regardless of how much land the public entities hold (directly or indirectly own or lease) [43 CFR 426.10(a)]. In order to minimize the burden on public entities, standard RRA forms are submitted by a public entity only when the public entity holds more than 40 acres subject to the acreage limitation provisions westwide, which makes it difficult to apply the revenue criteria as required to those public entities that hold less than 40 acres. When we become aware of such public entities, we may extend to those public entities the option to complete and submit for our review the Public Entity Information Sheet (Form 7–2565), which allows us to establish compliance with Federal reclamation law for those public entities that hold 40 acres or less and thus do not submit a standard RRA form because they are below the RRA forms submittal threshold. In addition, for those public entities that do not meet the exemption criteria, we must determine the proper rate to charge for Reclamation irrigation water deliveries. The Public Entity Information Sheet is disbursed at our discretion. The proposed revisions to the Public Entity Information Sheet will be effective starting in the 2010 water year and are designed to facilitate ease of completion.

Acreage limitation provisions applicable to religious or charitable organizations (new form)—Some religious or charitable organizations that receive Reclamation irrigation water may believe that they are under the RRA forms submittal threshold and, consequently, may not submit the appropriate RRA form(s). However, some of these organizations may in fact have a different RRA forms submittal threshold than what they believe it to be depending on whether these organizations meet all of the required criteria for full special application of the acreage limitations provisions to religious or charitable organizations [43 CFR 426.9(b)]. In addition, some organizations that (1) do not meet the criteria to be treated as a religious or charitable organization under the acreage limitation provisions, and (2) are exempt from the requirement to submit RRA forms due to the size of their landholdings (directly and indirectly owned and leased land), may in fact be receiving Reclamation irrigation water for which the full-cost rate must be paid because the start of Reclamation irrigation water deliveries occurred after October 1, 1981 [43 CFR 426.6(b)(2)]. The information obtained through completion of the Religious or Charitable Organization Identification Sheet (Form 7–2578) allows us to establish certain religious or charitable organizations' compliance with Federal reclamation law. The Religious or Charitable Organization Identification Sheet is disbursed at our discretion. The proposed revisions to the Religious or Charitable Organization Identification Sheet will be included starting in the 2010 water year, and are designed to facilitate ease of completion.

Changes to the forms and the instructions to those forms—Minor editorial changes were made to the currently approved forms and the instructions to those forms prior to the 60-day comment period initiated by the notice published in the **Federal Register** (73 FR 63507, Oct. 24, 2008). Those changes were designed to assist the respondents by increasing their understanding of the forms, clarifying the instructions for use when completing the forms, and clarifying the information that is required to be submitted with the forms. We received no public comments from the 60-day public comment period. The proposed revisions to the forms will be included starting in the 2010 water year.

Frequency: Generally, these forms will be submitted once per identified entity, trust, public entity, or religious or charitable organization. Each year, we expect new responses in accordance with the following numbers.

Respondents: Entity landholders, trusts, public entities, and religious or charitable organizations identified by Reclamation that are subject to the acreage limitation provisions of Federal reclamation law.

Estimated Total Number of Respondents: 500.

Estimated Number of Responses per Respondent: 1.0.

Estimated Total Number of Annual Responses: 500.

Estimated Total Annual Burden on Respondents: 72 hours.

ESTIMATE OF BURDEN FOR EACH FORM

Form name	Estimated number of respondents	Frequency of response	Total annual responses	Burden estimate per form (in minutes)	Total burden hours
Limited Recipient Identification Sheet	175	1.00	175	5	15
Trust Information Sheet	150	1.00	150	5	13
Public Entity Information Sheet	100	1.00	100	15	25
Religious or Charitable Identification Sheet	75	1.00	75	15	19
Total	500	1.00	500		72

Comments

Comments are invited on:

(a) Whether the proposed collection of information is necessary for the proper performance of our functions, including whether the information will have practical use;

(b) The accuracy of our burden estimate for the proposed collection of information;

(c) Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the RRA forms. A **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published in the **Federal Register** (73 FR 63507, Oct. 24, 2008). No public comments were received.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Before including your address, telephone 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.

Dated: April 21, 2009.

Richard W. Rizzi,

Acting Director, Program and Policy Services, Denver Office.

[FR Doc. E9–13844 Filed 6–11–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWO35000.L14300000.EQ0000.24–1A; OMB Control Number 1004–0004]

Information Collection; Desert Land Entries

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year extension of OMB Control Number 1004–0004 under the Paperwork Reduction Act. The BLM needs to collect the information in order to determine if an applicant is eligible to make a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, Washington, and Wyoming.

DATES: The OMB must respond to this request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before July 13, 2009.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB # 1004–0004), Office of Management and Budget, Office of Information and Regulatory Affairs, by electronic mail to *OIRA_Docket@omb.eop.gov,* or by facsimile to (202) 395–6566. In addition, please mail or hand-carry a copy of your comments to BLM Information Collection Clearance Officer (WO–630), Department of the Interior, 1849 C Street, NW., Mail Stop 401LS, Washington, DC 20240; or send a copy of your comments by electronic mail to *Jean_Sonneman@blm.gov*, ''Attn: 1004–0004.''

FOR FURTHER INFORMATION CONTACT: Alzata Ransom, Division of Lands, Realty and Cadastral Survey, at 202–452–7772 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: *60-Day Notice:* On September 23, 2008, the BLM published a 60-day notice (73 FR 54850) requesting comments on the proposed information collection. The comment period ended November 24, 2008. No comments were received.

Title: Desert Land Entries (43 CFR Part 2520).

OMB Control Number: 1004–0004.

Form Number: 2520–1.

Abstract: The BLM needs to collect the information in order to determine if an applicant is eligible to make a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, South Dakota, Utah, Washington, and Wyoming.

Current Action: This proposal is being submitted to extend the expiration date of August 31, 2009.

Type of Review: 3-year extension.

Affected Public: Applicants for a desert land entry.

Obligation to Respond: Required to obtain or retain benefits.

Application Fee per Response: $15.

Estimated Number of Annual Responses: 3.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden Hours: 6 hours.

The BLM requests comments on the following subjects: (1) Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility; (2) The accuracy of the BLM's estimate of the burden of the information collection, including the validity of the methodology and assumptions used; (3) The quality, utility, and clarity of the information collected; and (4) How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

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.

Jean Sonneman,

Bureau of Land Management, Acting Information Collection Clearance Officer.

[FR Doc. E9–13867 Filed 6–11–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[L14200000.BJ0000–LLNM915000–2009]

Notice of Filing of Plats of Survey, New Mexico, Oklahoma, Texas, and Kansas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management (BLM), Santa Fe, New Mexico, 30 calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

New Mexico Principal Meridian, New Mexico (NM)

The plat representing the dependent resurvey of a portion of the subdivisional lines, portions of the subdivision of sections, and a metes and bounds survey in section 20, Township 17 South, Range 30 East of the New Mexico Principal Meridian, New Mexico, accepted April 13, 2009, for Group 1075 NM.

The plat representing the dependent resurvey of the west and north boundaries and subdivisional lines, Township 14 North, Range 19 West of the New Mexico Principal Meridian, New Mexico, accepted March 26, 2009, for Group 1077 NM.

The plat representing the dependent resurvey of a portion of the east and south boundaries of the San Felipe Pueblo Grant and the subdivision of section 15, Township 13 North, Range 5 East of the New Mexico Principal Meridian, New Mexico, accepted May 21, 2009, for Group 1078 NM.

The plat representing the dependent resurvey of a portion of the Second Standard Parallel North, a portion of the subdivisional lines and the subdivision of sections 4 and 7, Township 8 North, Range 9 West of the New Mexico Principal Meridian, New Mexico, accepted May 28, 2009, for Group 1079 NM.

The plat, in three sheets, representing the dependent resurvey of a portion of the south and east boundaries, a portion of the subdivisional lines, and the metes and bounds survey in sections 13, 25, and 26, Township 8 North, Range 10 West of the New Mexico Principal Meridian, New Mexico, accepted May 28, 2009, for Group 1079 NM. The supplemental plat representing Township 30 North, Range 11 West of the New Mexico Principal Meridian, New Mexico, accepted May 28, 2009.

Indian Meridian, Oklahoma (OK)

The plat, in three sheets, representing the dependent resurvey of a portion of the boundary line between the States of Texas and Oklahoma, a portion of the subdivisional lines, the partition lines, and a portion of the adjusted 1875 meanders of the left bank of the Red River, Townships 5 and 6 South, Range 12 West of the Indian Meridian, Oklahoma, accepted May 8, 2009, for Group 85 OK.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections, and the metes and bounds survey in section 23, Township 12 North, Range 17 West of the Indian Meridian, Oklahoma, accepted December 9, 2008, for Group 60 OK.

The plat representing the dependent resurvey of a portion of the east boundary, the subdivisional lines, the metes and bounds survey, and the subdivision of section 24, Township 12 North, Range 17 West of the Indian Meridian, Oklahoma, accepted January 8, 2009 for Group 160 OK.

The supplemental plat representing Township 10 North, Range 23 East, of the Indian Meridian, Oklahoma, accepted April 29, 2009.

The supplemental plat representing Township 7 North, Range 10 West, of the Indian Meridian, Oklahoma, accepted May 21, 2009.

The Sixth Principal Meridian, Kansas (KS)

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines of section 24, Township 4 South, Range 15 East, Sixth Principal Meridian, Kansas, accepted March 26, 2009, for Group 31 KS.

The plat representing the dependent resurvey of certain center line intersections, of certain streets, adjacent to Block 15, and exterior lines, all within the Townsite of Horton, Township 4 South, Range 17 East, Sixth Principal Meridian, Kansas, accepted May 28, 2009, for Group 32 KS.

Texas (TX)

The plat representing the metes and bounds survey of the as-built center line, Brick Plant Road, sections 13, 20, 21, 22, and 23, Block 6 and sections 50, 51, and 52, Block 9, of the B. S. and F. Survey, Potter County Texas, accepted May 28, 2009 for Group 11 TX.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet. Contact Marcella Montoya at 505–438–7537, or *Marcella_Montoya@nm.blm.gov,* for assistance.

Robert A. Casias,

Chief, Branch of Cadastral Survey.

[FR Doc. E9–13845 Filed 6–11–09; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2009–N0082; 40120–1113–4044–D2–FY09]

Marine Mammal Protection Act; Stock Assessment Report

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft revised marine mammal stock assessment reports for two stocks of West Indian manatee; request for comments.

SUMMARY: In accordance with the Marine Mammal Protection Act of 1972, as amended (MMPA), and its implementing regulations, we, the U.S. Fish and Wildlife Service (Service), have developed a draft revised marine mammal stock assessment report (SAR) for each of the two West Indian manatee stocks in the southeastern United States and Puerto Rico: The Florida manatee (*Trichechus manatus latirostris*) stock and the Puerto Rico stock of Antillean manatee (*Trichechus manatus manatus*). Both are available for public review and comment.

DATES: We must receive comments by September 10, 2009.

ADDRESSES: To obtain the SARs for either or both of the West Indian manatee subspecies, and to submit comments, see Document Availability and Public Comment, respectively, under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: West Indian Manatee in Florida: Jim Valade, (904) 731–3336 (telephone) or *northflorida@fws.gov* (e-mail). West Indian Manatee in Puerto Rico: Carlos Diaz, (787) 851–7297 (telephone) or *Carlos_Diaz@fws.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

Background

Under the MMPA (16 U.S.C. 1361 *et seq.*) and its implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 18, we regulate the taking, possession, transportation, purchasing, selling, offering for sale, exporting, and importing of marine mammals. One of the MMPA's goals is to ensure that stocks of marine mammals occurring in waters under U.S. jurisdiction do not experience a level of human-caused mortality and serious injury that is likely to cause the stock to be reduced below its optimum sustainable population level (OSP). OSP is defined as ''the number of animals which will result in the maximum productivity of the population or the

species, keeping in mind the carrying capacity of the habitat and the health of the ecosystem of which they form a constituent element.''

To help accomplish the goal of maintaining marine mammal stocks at their OSPs, section 117 of the MMPA requires us and the National Marine Fisheries Service (NMFS) to prepare a SAR for each marine mammal stock that occurs in waters under U.S. jurisdiction. A SAR must be based on the best scientific information available; therefore, we prepare it in consultation with established regional scientific review groups. Each SAR must include: (1) A description of the stock and its geographic range; (2) a minimum population estimate, maximum net productivity rate, and current population trend; (3) an estimate of human-caused mortality and serious injury; (4) a description of commercial fishery interactions; (5) a categorization of the status of the stock; and (6) an estimate of the potential biological removal (PBR) level. The PBR is defined as ''the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its OSP.'' The PBR is the product of the minimum population estimate of the stock (N_{min}); one-half the maximum theoretical or estimated net productivity rate of the stock at a small population size (R_{max}); and a recovery factor (F_r) of between 0.1 and 1.0, which is intended to compensate for uncertainty and unknown estimation errors.

Section 117 of the MMPA also requires us and NMFS to review the SARs (a) at least annually for stocks that are specified as strategic stocks, (b) at least annually for stocks for which significant new information is available, and (c) at least once every 3 years for all other stocks.

A strategic stock is defined in the MMPA as a marine mammal stock (a) for which the level of direct human-caused mortality exceeds the PBR; (b) which, based on the best available scientific information, is declining and is likely to be listed as a threatened species under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.;* ESA), within the foreseeable future; or (c) which is listed as a threatened or endangered species under the ESA, or is designated as depleted under the MMPA.

The following table summarizes the information we are now making available in the draft revised SARs for the Florida and Puerto Rico stocks of the West Indian manatee, listing each stock's N_{min}, R_{max}, F_r, PBR, annual estimated human-caused mortality and serious injury, and status. After consideration of any public comments we receive, we will revise the SARs for one or both subspecies, as appropriate. We will publish a notice of availability and summary of the final SARs, including responses to comments we receive.

TABLE 1—SUMMARY: DRAFT REVISED STOCK ASSESSMENT REPORTS, WEST INDIAN MANATEE

West Indian Manatee Stocks:	N_{min}	R_{max}	F_r	PBR	Annual estimated average human-caused mortality and serious injury (5-year average)	Stock status
Florida	3,807	0.06	0.1	12	87	Strategic
Puerto Rico	72	0.04	0.1	0	2	Strategic

Document Availability

Draft Revised SAR for West Indian Manatee in Florida

You may obtain a copy by any one of the following methods:

- Internet: *http://www.fws.gov/northflorida.*
- Write to or visit (during normal business hours) the Field Supervisor, U.S. Fish and Wildlife Service, Jacksonville Field Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256–7517; telephone: (904) 731–3336.

Draft Revised SAR for West Indian Manatee in Puerto Rico

You may obtain a copy by any one of the following methods:

- Internet: *http://www.fws.gov/caribbean/es/Endangered-Animals.html.*
- Write to or visit (during normal business hours) the Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Field Office, Carr 301, KM 5.1, BQ Corozo, or P.O Box 491, Boqueron, PR 00622; telephone: (787) 851–7297.

Public Comment

Draft Revised SAR for West Indian Manatee in Florida

You may submit a written comment by any one of the following methods:

- E-mail: *northflorida@fws.gov.*
- Mail or hand-delivery: Field Supervisor, Jacksonville Field Office (see address above).
- Fax: (904) 731–3045.

Draft Revised SAR for West Indian Manatee in Puerto Rico

You may submit a written comment by any one of the following methods:

- E-mail: *Carlos_Diaz@fws.gov.*
- Mail or hand-delivery: Field Supervisor, Caribbean Field Office (see address above).
- Fax: (787) 851–7440.

References

In accordance with the MMPA, we include in this notice a list of the information sources and public reports upon which we based the SARs.

Florida Manatee Stock:

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Authority

The authority for this action is the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et al.*).

Dated: June 3, 2009.

Marvin Moriarty,

Acting Director, Fish and Wildlife Service.

[FR Doc. E9–13799 Filed 6–11–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORV00000–L10200000.DD0000; HAG 9–0205]

Notice of Meeting, John Day/Snake Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day-Snake Resource Advisory Council (JDSRAC) will meet as indicated below:

DATES: The meeting will begin at 7 p.m. (Pacific Daylight Time) on June 30, 2009.

ADDRESSES: The JDSRAC will meet by teleconference. For a copy of material to be discussed or the conference call number, please contact the BLM Vale District; information below.

FOR FURTHER INFORMATION CONTACT: Mark Wilkening, Public Affairs Officer, BLM Vale District Office, 100 Oregon Street, Vale, Oregon 97918, (541) 473–6218.

SUPPLEMENTARY INFORMATION: The JDSRAC will conduct a public meeting by teleconference to discuss and come to consensus on contents of a letter to be sent to the Oregon/Washington BLM State Director on the Draft Environmental Impact Statement for Vegetation Treatments Using Herbicides on BLM Lands in Oregon. The conference call meeting is open for the public to access by telephone. Public comment is scheduled from 7:45 to 8 p.m. (Pacific Daylight Time) June 30, 2009. For a copy of the information distributed to the JDSRAC members please contact Mark Wilkening.

Dated: June 2, 2009.

Michael L. Morcom,

Acting District Manager, Vale District Office.

[FR Doc. E9–13847 Filed 6–11–09; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO200–LLCOF02000–L07770900–XZ0000–241A00]

Notice of Meeting, Front Range Resource Advisory Council (Colorado)

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) Front Range Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held July 15, 2009 from 9:15 a.m. to 4 p.m.

ADDRESSES: BLM Royal Gorge Field Office, 3028 East Main Street, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Cass Cairns, (719) 269–8553.

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 the Royal Gorge Field Office and San Luis Valley, Colorado. Planned agenda topics include: Manager updates on current land management issues, Paleontology Resources Preservation Act of 2009, and Over The River™ project proposal discussion.

All meetings are open to the public. The public is encouraged to make oral comments to the Council at 10 a.m. or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Council Meeting will be maintained in the Royal Gorge Field Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Meeting minutes and agenda (10 days prior to each meeting) are also available at: *http://www.blm.gov/rac/co/frrac/co_fr.htm.*

Dated: June 5, 2009.

Roy L. Masinton,

Field Manager, Royal Gorge Field Office.

[FR Doc. E9–13858 Filed 6–11–09; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–07–1320–EL; COC–70615]

Notice of Public Meeting, To Receive for Comments on an Environmental Analysis, Finding of No Significant Impact, Maximum Economic Recovery Report, and Fair Market Value for Coal Lease Application COC–70615

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of correction.

SUMMARY: The Bureau of Land Management published a Notice of Federal Competitive Coal Lease Sale Offer in the **Federal Register** on May 28, 2009 [74 FR 101]. The Legal Description should read as follows:

T. 13 S., R. 90 W., 6th P.M., Sections 3, 4, 5, more particularly described as follows:

Beginning at a point on the North Section line at the Section Corner common to Sections 4 and 5; thence S.87 degrees 22′08″E. 5291.34 feet; thence S.87 degrees 32′05″E. 1604.94 feet; thence S.0 degrees 04′31″W. 4246.44 feet; thence N.86 degrees 45′23″W. 1558.38 feet; thence N.84 degrees 12′17″W. 5148.60 feet; thence N.86 degrees 44′37″W. 1321.91 feet; to the existing lease line for Coal lease COC–61357; thence along said existing lease line N.10 degrees 00′13″W. 1382.68 feet; thence N.86 degrees 08′20″W. 390.65 feet; thence N.00 degrees 1135.85 feet; to the southeasterly boundary of Tract 4; thence N.14 degrees 36′45″ E. 1463.19 feet; along said southeasterly boundary of Tract 4; thence S.87 degrees 18′59″E. 1375.63 feet; along the north section line of section 5 to the Point of beginning.

Containing approximately 785.79 acres more or less, in Gunnison County, Colorado.

FOR FURTHER INFORMATION CONTACT: Kurt Barton at BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, or by telephone 303–239–3714.

Dated: June 8, 2009.

Kurt M. Barton,

Solid Minerals LLE, Division of Energy, Lands and Minerals.

[FR Doc. E9–13846 Filed 6–11–09; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from April 27 to May 1, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington, DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: June 9, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

KEY: State, County, Property Name, Address/ Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

ARIZONA

Maricopa County

Dowdy, George O., Rental Cottage, 6818 N. 60th Ave., Glendale, 09000246, Listed, 4/30/09

ARKANSAS

Cleburne County

Heber Springs Commercial Historic District, 100, 200 blocks E. Main St., 100–500 blocks of W. Main St., 100 block of N. and S. 3rd and N. and S. 4th Sts., Heber Springs, 09000266, Listed, 5/01/09

CALIFORNIA

Alameda County

Women's Athletic Club of Alameda County, 525 Bellevue Ave., Oakland, 09000247, Listed, 4/29/09

Merced County

Merced Theatre, 301 W. 17th St., Merced, 09000248, Listed, 5/01/09

COLORADO

Clear Creek County

Mill City House, 247 Co. Rd. 308, Dumont, 09000250, Listed, 4/30/09

El Paso County

Van Briggle Pottery Company, 1125 Glen Ave./231 W. Uintah St., Colorado Springs, 09000249, Listed, 4/29/09

FLORIDA

Alachua County

Mission San Francisco de Potano, Address Restricted, Gainesville vicinity, 09000251, Listed, 4/30/09

MASSACHUSETTS

Worcester County

Safety Fund National Bank, 470 Main St., Fitchburg, 09000252, Listed, 4/30/09 (Downtown Architecture of H.M. Francis, Fitchburg, MA)

MISSOURI

St. Louis Independent City

Bel Air Motel, 4630 Lindell, St. Louis, 09000253, Listed, 5/01/09

NEVADA

Clark County

''Welcome to Fabulous Las Vegas'' Sign, The, Las Vegas Blvd., in public right of way, approx. .5 mi. S. of intersection with Russell Rd., Paradise Township, 09000284, Listed, 5/01/09

NEW YORK

Chautauqua County

Dunkirk Schooner Site, Address Restricted, Dunkirk, 09000285, Listed, 5/01/09

Greene County

Methodist Episcopal Church of Windham Centre, 1843 NY 23, Windham, 09000255, Listed, 4/27/09

Kings County

Congregation Beth Abraham, 203 E. 37th St., Brooklyn, 09000256, Listed, 4/30/09

New York County

New York Telephone Company Building, 140 W. St., New York, 09000257, Listed, 4/30/09

Park and Tilford Building, 310 Lenox Ave., New York, 09000258, Listed, 5/01/09

Onondaga County

Temple Society of Concord, 910 Madison St., Syracuse, 09000259, Listed, 4/27/09

Rockland County

Contempora House, 88 S. Mountain Rd., New City vicinity, 09000260, Listed, 4/29/09

NORTH CAROLINA

Buncombe County

Baird, Zebulon H., House, 460 Weaverville Rd., Weaverville vicinity, 09000261, Listed, 4/30/09

Thomas Chapel A.M.E. Zion Church, 300 Cragmont Rd., Black Mountain, 09000262, Listed, 4/30/09

Durham County

Holloway Street Historic District (Boundary Increase), Roughly bounded by Holloway, Elizabeth, Primitive, and Queen Sts., and Mallard Ave., Durham, 09000263, Listed, 4/30/09 (Durham MRA)

Robeson County

Asbury Methodist Church, SE. side US Hwy. 301 N., .10 mi. SW. of NC 1154, Raynham, 09000264, Listed, 4/30/09

Wilkes County

Downtown Wilkesboro Historic District, Bounded roughly by Cowles and Corporation Sts., Henderson Dr., and Woodland Blvd., Wilkesboro, 09000290, Listed, 4/30/09 (Wilkesboro MRA)

UTAH

Cache County

Crockett House, 82 Crockett Ave., Logan, 09000017, Listed, 4/27/09

[FR Doc. E9–13952 Filed 6–11–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 30, 2009. Pursuant to § 60.13 of 36 CFR part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by the United States Postal Service to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington DC 20240; by all

other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 29, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/ National Historic Landmarks Program.

COLORADO

El Paso County

North Cheyenne Canon Park, 2120 N. Cheyenne Canon Rd., Colorado Springs, 09000489

Grand County

Little Buckaroo Ranch Barn, 20631 Trail Ridge Rd., Rocky Mountain National Park, Grand Lake, 09000490

FLORIDA

Lake County

Laroe Family Homestead Historic District, 3430 W. Co. Rd. 44 & 2891 E. Orange Ave., Eustis, 09000493

GEORGIA

Chatham County

Eureka Club—Farr's Point, 2326 E. Blvd., Savannah, 09000491

Jasper County

Pope-Talmadge House, 2560 Calvin Rd., Monticello, 09000492

INDIANA

Clark County

Ohio Falls Car and Locomotive Company Historic District, 300 Missouri Ave., Jeffersonville, 09000494

KANSAS

Butler County

Loomis-Parry House, 1003 State St., Augusta, 09000495

Crawford County

First Presbyterian Church, 202 N. Summit, Girard, 09000496

Douglas County

Mackie, George K., House, (Lawrence, Kansas MPS) 1941 Massachusetts St., Lawrence, 09000497

Sedgwick County

Pryor House, (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957) 263 S. Pershing, Wichita, 09000499

Van Arsdale, W.O., House, (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957) 201 N. Broadway, Wichita, 09000500

Winders Historic District, (Residential Resources of Wichita, Sedgwick County, Kansas 1870–1957) 1038–1040, 1044, and 1045 S. Topeka Ave., Wichita, 09000498

Trego County

Lipp Barn, (Agriculture-Related Resources of Kansas) 17054 103rd Ave., Collyer, 09000501

MISSOURI

Cape Girardeau County

Erlbacher Buildings, 1105 and 1107 Broadway, Cape Girardeau, 09000502

Madison County

Fredericktown Courthouse Square Historic District, 110–145 E. Main St., 106–125 W. Main St., 110–120 S. Main St. and Court Square, Fredericktown, 09000503

NORTH CAROLINA

Guilford County

Foust-Carpenter and Dean Dick Farms, E. and W. sides of Mt. Hope Church Rd., N. and S. sides of Carpenter House Rd., Whitsett, 09000504

NORTH DAKOTA

Burleigh County

Double Ditch State Historic Site, Address Restricted, Bismarck, 09000505

WASHINGTON

King County

Naval Reserve Armory, 860 Terry Ave. N., Seattle, 09000506

Women's University Club of Seattle, 1105 6th Ave., Seattle, 09000507

Pierce County

Washington Building, 1019 Pacific Ave., Tacoma, 09000508

WISCONSIN

Columbia County

Zion Evangelical Lutheran Church and Parsonage, 236 and 254 W. Mill St., Columbus, 09000509

[FR Doc. E9–13951 Filed 6–11–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OMB Number 1121–0224]

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 60-day notice of information Collection Under Review: National Youth Gang Survey.

The U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, 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 August 11, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have additional comments, especially on the estimated public burden or associated reponse time, or suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mr. Dennis Mondoro, (202) 514–3913, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 Seventh 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:

- Evaluate 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.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* National Youth Gang Survey.

3. *Agency form number, if any, and the applicable component of the U.S. Department of Justice sponsoring the collection:* Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, United States Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Local, State, or tribal law enforcement agencies.

Other: None.

Abstract: This collection will gather information related to youth and their activities for research and assessment purposes.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,100 respondents will take ten minutes each to complete the survey.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 425 total annual burden hours associated with this collection.

If additional information is required, contact Ms. Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, 601 D Street, NW., Washington, DC 20530.

Dated: June 8, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–13771 Filed 6–11–09; 8:45 am]

BILLING CODE 4410–18–P

LEGAL SERVICES CORPORATION

Notice of Intent To Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients in Wyoming Beginning August 1, 2009

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2009 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients in Wyoming, beginning August 1, 2009.

DATES: All comments and recommendations must be received on or before the close of business on July 13, 2009.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation; 3333 K Street, NW., Third Floor; Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, at (202) 295–1545, or *haleyr@lsc.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on December 9, 2008 (73 FR 74756), LSC intends to award funds to the following organizations to provide civil legal services in the indicated service areas. Amounts are subject to change.

State and service area	Applicant name	Annualized grant amount
Wyoming:		
WY–4	Center for Dispute Solutions, Inc	$527,007
WY–4	Legal Aid of Wyoming, Inc	527,007
NWY–1	Center for Dispute Solutions, Inc	184,660
NWY–1	Legal Aid of Wyoming, Inc	184,660
MWY	Center for Dispute Solutions, Inc	13,266
MWY	Legal Aid of Wyoming, Inc	13,266

These grants and contracts will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). Awards will be made so that each service area is served, although none of the listed organizations are guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantees within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about August 1, 2009.

Dated: June 8, 2009.

Janet LaBella,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. E9–13798 Filed 6–11–09; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–046)]

NASA Advisory Council; Science Committee; Planetary Science Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration (NASA) announces a meeting of the Planetary Science Subcommittee of the NASA Advisory Council (NAC). This Subcommittee reports to the Science Committee of the NAC. The Meeting will be held for the purpose of soliciting from the scientific community and other person's scientific and technical information relevant to program planning.

DATES: Thursday, July 9, 2009, 8 a.m. to 5:30 p.m., and Friday, July 10, 2009, 8 a.m. to 3 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Norris, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4452, fax (202) 358–4118, or *mnorris@nasa.gov.*

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Planetary Science Division Update
—Analysis Group and Management Operations Working Group Reports
—Report on NRC Study of Plutonium Availability
—Report on Planetary Science Decadal Study

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide a copy of their passport, visa, or green card in addition to providing the following information

no less than 7 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee. To expedite admittance, attendees with U.S. citizenship can provide identifying information 3 working days in advance by contacting Marian Norris via e-mail at *mnorris@nasa.gov* or by telephone at (202) 358–4452.

Dated: June 5, 2009.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–13831 Filed 6–11–09; 8:45 am]

BILLING CODE 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 twelve meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Opera (application review): June 29–30, 2009 in Room 716. A portion of this meeting, from 3:15 p.m. to 4:15 p.m. on June 30th, will be open to the public for policy discussion. The remainder of the meeting, from 8:45 a.m. to 5:30 p.m. on June 29th and from 9 a.m. to 3:15 p.m. and 4:15 p.m. to 4:45 p.m. on June 30th, will be closed.

Theater (application review): June 29–July 2, 2009 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on June 29th, from 9 a.m. to 6 p.m. on June 30th–July 1st, and from 9 a.m. to 3 p.m. on July 2nd, will be closed.

Opera (application review): July 1–2, 2009 in Room 716. A portion of this meeting, from 3:30 p.m. to 4:30 p.m. on July 2nd, will be open to the public for policy discussion. The remainder of the meeting, from 8:45 a.m. to 5:30 p.m. on July 1st and from 9 a.m. to 3:30 p.m. and 4:30 p.m. to 5 p.m. on July 2nd, will be closed.

Music (application review): July 7–9, 2009 in Room 714. This meeting, from 9 a.m. to 6 p.m. on July 7th and 8th, and from 9 a.m. to 5 p.m. on July 9th, will be closed.

Music (application review): July 14–15, 2009 in Room 714. This meeting, from 9 a.m. to 6 p.m. on July 14th and from 8:30 a.m. to 5:45 p.m. on July 15th, will be closed.

Theater (application review): July 14–17, 2009 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on July 14th, from 9 a.m. to 6 p.m. on July 15th–16th, and from 9 a.m. to 3 p.m. on July 17th, will be closed.

Music (application review): July 16–17, 2009 in Room 714. This meeting, from 9 a.m. to 6 p.m. on July 16th and from 8:30 a.m. to 5:45 p.m. on July 17th, will be closed.

Artists Communities (application review): July 21–22, 2009 in Room 730. A portion of this meeting, from 3:45 p.m. to 4:30 p.m. on July 22nd, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on July 21st and from 9 a.m. to 3:45 p.m. on July 22nd, will be closed.

Museums (application review): July 21–24, 2009 in Room 716. This meeting, from 9 a.m. to 5:30 p.m. on July 21st, from 9 a.m. to 6 p.m. on July 22nd–23rd, and from 9 a.m. to 4 p.m. on July 24th, will be closed.

Presenting (application review): July 27–28, 2009 in Room 716. This meeting, from 8:30 a.m. to 5 p.m. on July 27th and from 9 a.m. to 1:15 p.m. on July 28th, will be closed.

Presenting (application review): July 28–29, 2009 in Room 716. This meeting, from 2:15 p.m. to 5 p.m. on July 28th and from 9 a.m. to 4 p.m. on July 29th, will be closed.

Music (application review): July 30–31, 2009 in Room 714. This meeting, from 9 a.m. to 6 p.m. on July 30th and from 8:30 a.m. to 5:45 p.m. on July 31st, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

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: June 8, 2009.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E9–13815 Filed 6–11–09; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Integrative; Notice of Meeting; Committee of Visitors Panel for the Experimental Program to Stimulate Competitive Research (EPSCoR): Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee of Visitors Panel for the Experimental Program to Stimulate Competitive Research (EPSCoR) #1373.

Date and Time: August 11, 2009, 8 a.m.–5 p.m.

August 12, 2009, 8 a.m.–5 p.m.

Place: National Science Foundation 4201 Wilson Blvd., Room 320, Arlington, VA 22230.

Type of Meeting: Partially open.

Public Sessions:

August 11, 2009, 8 a.m.–10 a.m. General introductions and instructions.

August 12, 2009, 4 p.m.—5 p.m. Presentation of COV findings including outcomes under the Government Performance and Results Act (GPRA).

Closed Sessions: All sessions not stated above.

Contact Person: Simona Gilbert, Administrative Manager, Experimental Program to Stimulate Competitive Research (EPSCoR), Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 292–8683.

Purpose of Meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To review and evaluate the Experimental Program to Stimulate Competitive Research (EPSCoR) Program and provide assessment of program level technical and managerial matters pertaining to proposal decisions and program operations.

Reason for Closing: Certain sessions of the meeting are closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c);, (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–13843 Filed 6–11–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering (CEOSE); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Committee on Equal Opportunities in Science and Engineering (1173).

Dates/Time: June 29, 2009, 8:30 a.m.–5:30 p.m. June 30, 2009, 8:30 a.m.–2 p.m.

Place: National Science Foundation (NSF), 4201 Wilson Boulevard, Room 1235 Arlington, VA 22230.

To help facilitate your access into the building, please contact the individual listed below prior to the meeting so that a visitors badge may be prepared for you in advance.

Type of Meeting: Open.

Contact Person: Dr. Margaret E.M. Tolbert, Senior Advisor and CEOSE Executive Liaison, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Telephone Numbers: (703) 292–4216, (703) 292–8040, *mtolbert@nsf.gov*.

Minutes: Minutes may be obtained from the Executive Liaison at the above address or the Web site at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp*.

Purpose of Meeting: To study NSF programs and policies and provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

Monday, June 29, 2009

Opening Statement by the CEOSE Chair.
Presentations and Discussions:

- ✓ The Intersection of Science and Engineering with Diversity and Inclusion;
- ✓ Women and Underrepresented Minorities in STEM: a Science Policy Perspective;
- ✓ A Conversation with the Deputy Director of the National Science Foundation;
- ✓ Plans for the CEOSE Mini-Symposium on Women of Color in Science and Engineering;
- ✓ Key Points from the ''Understanding Interventions that Broaden Participation in Research Careers Conference'';
- ✓ Race, Gender, Ethnicity, and Disability in China—A CEOSE Member's Perspective;
- ✓ The 2007–2008 CEOSE Biennial Report to Congress;
- ✓ Concurrent Meetings of CEOSE Ad Hoc Subcommittees;
- ✓ Reports by Ad Hoc Subcommittee Chairs.

Tuesday, June 30, 2009

Opening Statement by the CEOSE Chair.
Presentations and Discussions:

- ✓ NSF Program Management Curriculum, Program Directors' Seminar With a Focus on Broadening Participation Aspects;
- ✓ Broadening Participation at the National Science Foundation and the Impact of the American Recovery and Reinvestment Act and America Competes Act;
- ✓ Reports by CEOSE Liaisons to Various NSF Advisory Committees;
- ✓ Completion of Unfinished Business.

Dated: June 9, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–13842 Filed 6–11–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Dockets 50–0416 and 72–0050; NRC–2009–0230]

Notice of Issuance of Environmental Assessment and Finding of No Significant Impact; Entergy Operations, Inc., Grand Gulf Nuclear Station, Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact.

FOR FURTHER INFORMATION CONTACT: John Goshen, Project Manager, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3325; fax number: (301) 492–3342; e-mail: *john.goshen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Environmental Assessment (EA)

Identification of Proposed Action: By letter dated December 22, 2008, as supplemented March 20, 2009, Entergy Operations, Inc. (Entergy) submitted to the United States Nuclear Regulatory Commission (NRC) a one-time exemption request from the requirements of 10 CFR 72.212(a)(2) and (b)(7) for four HI–STORM 100 System Model 68 Multi-Purpose Canisters (MPCs) at the Grand Gulf Nuclear Station (GGNS) Independent Spent Fuel Storage Facility (ISFSI) due to non-compliance with two of the terms and conditions of Certificate of Compliance (CoC)–1014, Amendment No. 2 at the time of cask loading. Section 72.212(a)(2) limits the general license issued by 10 CFR 72.210 to the storage of spent fuel in casks approved under the provisions of Part 72. Section 72.212(b)(7) requires that the general licensee to comply with the terms and conditions of the applicable CoC.

In December 2006, due to a database error, Entergy loaded four MPCs with individual fuel assemblies (IFAs) that exceeded the maximum burnup limits and maximum decay heat limits specified in the CoC–1014, Amendment No. 2, Appendix B, Section 2.1. Additionally, the supplemental cooling required by the CoC–1014, Amendment No. 2, Appendix A, Section 3.1.4 for the four MPCs had not been implemented. Entergy identified the non-compliances on June 18, 2008, in an event report to the NRC, along with a preliminary evaluation that determined that fuel cladding temperatures had not exceeded thermal limits during any time during the affected period. The proposed action before the NRC is whether to grant this exemption request pursuant to 10 CFR 72.7.

Need for the Proposed Action: Entergy requested the exemption from 10 CFR 72.212(a)(2) and 10 CFR 72.212(b)(7) to allow continued, non-compliant storage of the IFAs in the affected MPCs.

Environmental Impacts of the Proposed Action: The proposed action under consideration would allow Entergy a one-time exemption from 10 CFR 72.212(a)(2) and 10 CFR 72.212(b)(7) for the four affected MPCs at GGNS ISFSI. Entergy's evaluation and a thermal analysis by Holtec, the fabricator of the cask system, determined that the fuel cladding was intact, and therefore, the integrity of the affected MPCs and the contained IFAs was not compromised. The heat loads in the affected casks have decreased to within the limits set by CoC–1014.

The NRC staff concludes that the requested exemption has low safety significance and that, in accordance with 10 CFR 72.7, approval of the requested exemption will not endanger life or property or the common defense and security and is otherwise in the public interest. The NRC staff further concludes that approving the exemption request would have no significant impact on the environment.

Alternative to the Proposed Action: The no-action alternative to the proposed action would be to deny approval of the exemption. Denial of the exemption request would require Entergy to unload the affected MPCs. Unloading the MPCs would expose Entergy's personnel to additional radiation, generate contaminated waste, and run the risks of a possible fuel handling accident and a possible heavy load handling accident.

Given the risks associated with unloading the casks and that there are no significant radiological or non-radiological environmental impacts arising from the continued storage of the

IFAs in the affected MPCs, the NRC concludes that the preferred alternative is to grant the exemption request.

II. Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR Part 51. Based upon the foregoing Environmental Assessment, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2) and 10 CFR 72.212(b)(7) will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

III. Further Information

The document related to this action is available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* A copy of the exemption request, dated December 22, 2008, can be found on this site using the Agencywide Document Access and Management System (ADAMS), accession number ML091470104. If you do not have access to ADAMS or if there are problems in accessing the document located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

This document may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, MD, this 3rd day of June 2009.

For the Nuclear Regulatory Commission.

Eric Benner,

Chief, Licensing Branch, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards.

[FR Doc. E9–13711 Filed 6–11–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425; NRC–2009–0237]

Southern Nuclear Operating Co., Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia: City of Dalton, Georgia Vogtle Electric Generating Plant, Units 1 and 2; Notice of Issuance of Renewed Facility Operating License Nos. NPF–68 and NPF–81 for an Additional 20-Year Period Record of Decision

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Renewed Facility Operating License Nos. NPF–68 and NPF–81 to Southern Nuclear Operating Company, Inc. (licensee), Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, co-owners of the Vogtle Electric Generating Plant (VEGP), Units 1 and 2. Renewed Facility Operating License Nos. NPF–68 and NPF–81 authorize operation of VEGP by the licensee at reactor core power levels not in excess of 3,625.6 megawatts thermal for each unit, in accordance with the provisions of the VEGP renewed licenses and their technical specifications.

This notice also serves as the record of decision for the renewal of Facility Operating License Nos. NPF–68 and NPF–81 for VEGP, consistent with Title 10 of the *Code of Federal Regulations* (10 CFR) Section 51.103, ''Record of Decision-General.'' As discussed in the final supplemental environmental impact statement for VEGP (NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants,'' Supplement 34, ''Vogtle Electric Generating Plant, Units 1 and 2,'' issued December 2008), the Commission considered a range of reasonable alternatives that included power generation from coal, natural gas, oil, wind, solar, hydropower, geothermal, wood waste, municipal solid waste, and other biomass-derived fuels; delayed retirement; utility-sponsored conservation, and a combination of alternatives, including a no-action alternative. The factors considered in the record of decision appear in Supplement 34.

VEGP is a dual-unit pressurized-water reactor designed by Westinghouse Electric Corporation that is located in Wayne County, GA. The site is located approximately 25 miles south of Augusta, GA. The application for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which the license sets forth.

Prior public notice of the action involving the proposed issuance of the renewed license and of an opportunity for a hearing regarding the proposed issuance of the renewed license was published in the **Federal Register** on August 21, 2007 (72 FR 46680). For further details with respect to this action, see (1) the Southern Nuclear Operating Company, Inc., Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, license renewal application for VEGP, Units 1 and 2, dated June 29, 2007, as supplemented by letters dated through February 16, 2009, (2) the Commission's safety evaluation report (NUREG–1920, ''Safety Evaluation Report Related to the License Renewal of the Vogtle Electric Generating Plant, Units 1 and 2,'' Volumes 1 and 2, issued April 2009), (3) the licensee's updated safety analysis report, and (4) the Commission's final environmental impact statement (NUREG–1437, Supplement 34). These documents are available at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of Renewed Facility Operating License Nos. NPF–68 and NPF–81 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of License Renewal. Copies of the safety evaluation report for VEGP Units 1 and 2 (NUREG–1920, Volumes 1 and 2) and the final environmental impact statement (NUREG–1437, Supplement 34) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161–0002 (*http://www.ntis.gov*), 703–605–6000; or from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954 (*http://www.gpoaccess.gov*), 202–512–1800. All orders should clearly identify the NRC publication number and the requester's Government Printing Office deposit account number or a VISA or MasterCard number and expiration date.

Dated at Rockville, MD, this 3rd day of June 2009.

For the Nuclear Regulatory Commission.

David L. Pelton,

Chief, Reactor Projects Branch 1, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–13821 Filed 6–11–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–16; NRC–2009–0238]

DTE Energy, Enrico Fermi Atomic Power Plant, Unit 1; Notice of Public Meeting on the Proposed License Amendment and License Termination Plan

The U.S. Nuclear Regulatory Commission (NRC) is providing notice that the NRC staff will conduct a meeting to discuss and accept public comments on the Enrico Fermi Atomic Power Plant, Unit 1 (Fermi-1) proposed License Amendment and License Termination Plan (LTP) on Tuesday, June 30, 2009, at 7 p.m. in a meeting room at the Monroe County Board of Commissioners, 125 E. Second Street, Monroe, MI 48161 (*http://www.co.monroe.mi.us/*).

Fermi-1 was granted an operating license on May 10, 1963 by the Atomic Energy Commission, the regulatory predecessor to the NRC. Power testing above one megawatt thermal commenced in December 1965. In October 1966, due to blocked coolant flow, two fuel subassemblies sustained significant damage. No abnormal releases to the environment occurred. Fermi-1 was restarted approximately four years later. The facility was permanently shut down in November 1972 and the fuel and blanket subassemblies were shipped offsite in 1973. A possession-only license was issued on January 23, 1976. Since that time, the site has been in safe storage pending final decommissioning. Pursuant to 10 CFR 50.51(b), ''Continuation of license,'' the facility license remains in effect until the NRC notifies the licensee that the license has been terminated. On March 25, 2009, DTE Energy, the licensee, submitted a proposed LTP for the Fermi-1 site. The proposal is to incorporate the LTP by license condition (LC) via an amendment to the Fermi-1 license. The LC would also establish change criteria for determining when changes to the LTP would require prior NRC approval. The LTP describes the planned decommissioning activities, provides a schedule for the planned decommissioning activities, includes a cost estimate for the decommissioning, and assesses the environmental impacts.

The application for license amendment and the proposed LTP are available for public viewing at the NRC's Public Document Room (PDR) or electronically through the NRC Agencywide Documents Access and Management System (ADAMS) at accession number ML090970803. Documents may be examined, and/or copied for a fee, at the PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Public Electronic Reading Room). Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.*

Comments or questions regarding the proposed license amendment, proposed LTP or the public meeting may be addressed to Mr. Theodore B. Smith, Mail Stop T–8F5, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6721 or via e-mail *Theodore.Smith@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of June 2009.

For The Nuclear Regulatory Commission.

Duane Schmidt,

Acting Branch Chief, Reactor Decommissioning Branch, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–13820 Filed 6–11–09; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Notice of Information Collection

AGENCY: Peace Corps.

ACTION: Notice and request for OMB review and comment.

Title: Intention To Conduct a Survey of and Focus Groups With Returned Peace Corps Volunteers.

SUMMARY: The Peace Corps has submitted to the Office of Management and Budget (OMB) for clearance, a proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995. The proposed collection will survey a sample of Returned Peace Corps Volunteers about their thoughts about their in-country experience, post-service transition, post-service education and career, and their third core goal activities of promoting a better understanding of other peoples on the part of Americans. The data collected will inform agency programming and help the Agency to assess, through updated and objective data, the extent of RPCVs' cross-cultural activities with their family, friends, and communities throughout the United States with whom RPCVs come in contact. The data will be used specifically by the Office of Domestic Programs to review the range and type of services and support available to RPCVs and by the Office of Strategic Information, Research, and Planning to support Agency level reporting. In addition to the survey, the Office of Strategic Information, Research, and Planning wishes to conduct focus groups with Returned Peace Corps Volunteers (RPCVs) about their post-service transition, post-service education and career, and their third goal activities of promoting a better understanding of other peoples on the part of Americans. The data will be used to assess the range and type of services available to RPCVs and to support accurate interpretation of Agency level data.

The initial **Federal Register** notice was published on April 30, 2009, Volume 74, No. 82, pg. 20004 for 60 days. Also available at GPO Access: *http://wais.access.gpo.gov.* No comments, inquiries or responses to the notice were received. A copy of the proposed information collections can be obtained from Susan Jenkins, Office of Strategic Information, Research and Planning, Peace Corps, 1111 20th Street, NW., Washington, DC 20526. Dr. Jenkins can be contacted by telephone at 202–692–1241 or e-mail at *SJenkin2@peacecorps.gov.* E-mail comments must be made in text and not in attachments. Submit comments on or before July 13, 2009.

ADDRESSES: Written comments should be sent to the Peace Corps Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 735 17th Street, NW., Washington, DC 20503. And to Susan Jenkins, Office of Strategic Information, Research and Planning, Peace Corps, 1111 20th Street, NW., Washington, DC

20526. Dr. Jenkins can be contacted by telephone at 202–692–1241 or e-mail at *SJenkin2@peacecorps.gov*.

FOR FURTHER INFORMATION CONTACT: Susan Jenkins, Office of Strategic Information, Research and Planning, Peace Corps, 1111 20th Street, NW., Washington, DC 20526.

SUPPLEMENTARY INFORMATION:

Title: Survey of Returned Peace Corps Volunteers.

Need for and Use of This Information: The survey is the fourth in a series of Returned Peace Corps Volunteer surveys that have been administered approximately every ten years. This iteration will be a voluntary, Web-based survey to gather information about Volunteers' in-country experience, post-service transition, post- service education and career, and their third goal activities of promoting a better understanding of other peoples on the part of Americans. The data will be used to assess the range and type of services available to RPCVs, improve Peace Corps operations (*e.g.,* recruitment for PC Response), and support Agency level performance reporting. Where possible, data will be compared across surveys to look for trends over time. Data will be collected from a simple random sample of Returned Peace Corps Volunteers sufficient to gather data with a 99 percent confidence level and a confidence interval of plus or minus 5.

Respondents: Returned Peace Corps Volunteers.

Respondents' Obligation To Reply: Voluntary.

Burden on the Public

a. *Annual reporting burden:* 750 hours.

b. *Annual respondent recordkeeping burden:* 0 hours.

c. *Estimated average burden per response:* 30 minutes.

d. *Frequency of response:* One-time.

e. *Estimated number of respondents:* 1,500.

f. *Estimated cost to respondents:* $0.00/$0.00.

Dated: May 22, 2009.

Garry Stanberry,

Deputy Associate Director for Management.

[FR Doc. E9–13851 Filed 6–11–09; 8:45 am]

BILLING CODE 6015–01–P

PEACE CORPS

Peace Corps Application

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (Renewal with minimal text changes in the previously approved collection of OMB Control Number 0420–0005, Peace Corps Application).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 USC, Chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request for renewal of information collection, OMB Control Number 0420–0005, the Peace Corps Volunteer Application. This is a request for approval for renewal of an active OMB Control Number. The purpose of this notice is to allow for public comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collections information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the proposed information collection form may be obtained from Ms. Dorothy Sullivan, Office of Volunteer Recruit and Selection, Operations Division, Recruitment Support Branch, Peace Corps, 1111 20th Street, NW., Room 3157, Washington, DC 20526. Ms. Sullivan can be contacted by telephone at 202–692–1873 or 800–424–8580 ext 1873 or e-mail at *dsullivan@peacecorps.gov*. Submit comments on or before July 13, 2009.

Need For and Use of this Information: This use of this application completed voluntarily by potential Peace Corps Volunteers in order to identify prospective applicants and process the applicants for Volunteer service. This information, which is gathered by an electronic on-line version of the previous used paper form, is used to determine qualifications and potential for placement of applicants, in fulfillment of the first goal of the Peace Corps as required by Congressional legislation and to enhance the Peace Corps Volunteer process.

Respondents: Potential Peace Corps Volunteers.

Respondent's Obligation to Reply: Voluntary.

Burden on the Public:

a. *Annual reporting burden:* 320,000 hours.

b. *Annual record keeping burden:* 0 hours.

c. *Estimated average burden per response:* 8 hours .

d. *Frequency of response:* one time.

e. *Estimated number of likely respondents:* 40,000.

f. *Estimated cost to respondents:* $0.

Dated: May 22, 2009.

Garry Stanberry,

Deputy Associate Director for Management.

[FR Doc. E9–13854 Filed 6–11–09; 8:45 am]

BILLING CODE 6051–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11768 and #11769]

Alabama Disaster #AL–00024

AGENCY: U.S. 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 Alabama (FEMA–1842–DR), dated 06/03/2009.

Incident: Severe storms, tornadoes, flooding, and straight-line winds.

Incident Period: 05/06/2009 through 05/08/2009.

Effective Date: 06/03/2009.

Physical Loan Application Deadline Date: 08/03/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 03/03/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/03/2009, 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: Autauga, Bullock, Elmore, Montgomery.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500

	Percent
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11768B and for economic injury is 11769B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–13826 Filed 6–11–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11772 and # 11773]

Florida Disaster # FL–00043

AGENCY: U.S. 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 Florida (FEMA—1840—DR), dated 06/04/2009.

Incident: Severe storms, flooding, tornadoes, and straight-line winds.

Incident Period: 05/17/2009 and continuing.

Effective Date: 06/04/2009.

Physical Loan Application Deadline Date: 08/03/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 03/04/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/04/2009, 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: Baker, Clay, Flagler, Putnam, Volusia.

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 117726 and for economic injury is 117736.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–13828 Filed 6–11–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Extension of Existing Collection; Comment Request

Upon Written Request, Copies Available From: U.S. Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–11; OMB Control No. 3235–0085; SEC File No. 270–94.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in the following rule: Rule 17a–11 (17 CFR 240.17a–11) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

In response to an operational crisis in the securities industry between 1967 and 1970, the Commission adopted Rule 17a–11 (17 CFR 240.17a–11) under the Exchange Act on July 11, 1971. The Rule requires broker-dealers that are experiencing financial or operational difficulties to provide notice to the Commission, the broker-dealer's designated examining authority (''DEA''), and the Commodity Futures Trading Commission (''CFTC'') if the broker-dealer is registered with the CFTC as a futures commission merchant. Rule 17a–11 is an integral part of the Commission's financial responsibility program which enables the Commission, a broker-dealer's DEA, and the CFTC to increase surveillance of a broker-dealer experiencing difficulties and to obtain any additional information necessary to gauge the broker-dealer's financial or operational condition.

Rule 17a–11 also requires over-the-counter (''OTC'') derivatives dealers and broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3–1 to notify the Commission when their tentative net capital drops below certain levels. OTC derivatives dealers must also provide notice to the Commission of backtesting exceptions identified pursuant to Appendix F of Rule 15c3–1 (17 CFR 15c3–1f).

Compliance with the Rule is mandatory. The Commission will generally not publish or make available to any person notice or reports received pursuant to Rule 17a–11. The Commission believes that information obtained under Rule 17a–11 relates to a condition report prepared for the use of the Commission, other federal governmental authorities, and securities industry self-regulatory organizations responsible for the regulation or supervision of financial institutions.

Only broker-dealers whose capital declines below certain specified levels or who are otherwise experiencing financial or operational problems have a reporting burden under Rule 17a–11. In 2008, the Commission received approximately 400 notices under this Rule. The Commission did not receive any Rule 17a–11 notices from OTC derivatives dealers or broker-dealers that are permitted to compute net capital pursuant to Appendix E to Exchange Act Rule 15c3–1.

Each broker-dealer reporting pursuant to Rule 17a–11 will spend approximately one hour preparing and transmitting the notice required by the rule. Accordingly, the total estimated annualized burden under Rule 17a–11 is 400 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission'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. Consideration will be given to comments and suggestions submitted in

writing within 60 days of this publication.

Comments should be directed to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: June 8, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13814 Filed 6–11–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form 13F; SEC File No. 270–22; OMB Control No. 3235–0006.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Section 13(f)[1] of the Securities Exchange Act of 1934[2] (the ''Exchange Act'') empowers the Commission to: (1) Adopt rules that create a reporting and disclosure system to collect specific information; and (2) disseminate such information to the public. Rule 13f-1[3] under the Exchange Act requires institutional investment managers that exercise investment discretion over accounts—having in the aggregate a fair market value of at least $100,000,000 of exchange-traded or NASDAQ-quoted equity securities—to file quarterly reports with the Commission on Form 13F.

The information collection requirements apply to institutional investment managers that meet the $100 million reporting threshold. Section 13(f)(5) of the Exchange Act defines an ''institutional investment manager'' as any person, other than a natural person, investing in or buying and selling securities for its own account, and any person exercising investment discretion with respect to the account of any other person. Form 13F under the Exchange Act defines ''investment discretion'' for purposes of Form 13F reporting.

The reporting system required by Section 13(f) of the Exchange Act is intended, among other things, to create in the Commission a central repository of historical and current data about the investment activities of institutional investment managers, and to improve the body of factual data available to regulators and the public.

The Commission staff estimates that 4,052 respondents make approximately 16,208 responses under the rule each year. The staff estimates that on average, Form 13F filers spend 98.8 hours/year to prepare and submit the report. In addition, the staff estimates that 210 respondents file approximately 840 amendments each year. The staff estimates that on average, Form 13F filers spend 4 hours/year to prepare and submit amendments to Form 13F. The total annual burden of the rule's requirements for all respondents therefore is estimated to be 401,178 hours ((4,052 filers x 98.8 hours) + (210 filers x 4 hours)).

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: June 8, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13813 Filed 6–11–09; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78m(f).

[2] 15 U.S.C. 78a *et seq.*

[3] 17 CFR 240.13f–1.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28760; File No. 812–13604]

PowerShares Exchange-Traded Fund Trust, et al.; Notice of Application

June 8, 2009.

AGENCY: Securities and Exchange Commission.

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from rule 12d1–2(a) under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

APPLICANTS: PowerShares Exchange-Traded Fund Trust, PowerShares Exchange-Traded Fund Trust II, PowerShares India Exchange-Traded Fund Trust and PowerShares Actively Managed Exchange-Traded Fund Trust (collectively, ''PowerShares Trusts''), AIM Counselor Series Trust, AIM Equity Funds, AIM Funds Group, AIM Growth Series, AIM International Mutual Funds, AIM Investment Funds, AIM Investment Securities Funds, AIM Sector Funds, AIM Tax-Exempt Funds, AIM Treasurer's Series Trust, AIM Variable Insurance Funds, and Short-Term Investments Trust (collectively, ''AIM Trusts'' and together with PowerShares Trusts, the ''Trusts''), Invesco PowerShares Capital Management LLC (''IPCM'') and Invesco Aim Advisors, Inc. (''IAA'') and Invesco Aim Distributors, Inc. (the ''Distributor'').

DATES: *Filing Dates:* The application was filed on November 14, 2008, and amended on May 26, 2009. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on July 6, 2009 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; Applicants: PowerShares Trusts and IPCM, 301 West Roosevelt Road, Wheaton, IL 60187, AIM Trusts, IAA, and the Distributor, 11 Greenway Plaza, Suite 100, Houston, TX 77046.

FOR FURTHER INFORMATION CONTACT: Barbara Heussler, Senior Counsel, at (202) 551–6990, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each of PowerShares Exchange-Traded Fund Trust, PowerShares Exchange-Traded Fund Trust II, and PowerShares India Exchange-Traded Fund Trust is organized as a Massachusetts business trust. Each of the other Trusts is organized as a Delaware statutory trust.

IPCM is a Delaware limited liability company and IAA is a Delaware corporation; each is registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and currently serves as an investment adviser to existing series of the Trusts. The Distributor is a Delaware corporation and is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (''Exchange Act''). The Distributor serves as the distributor of existing series of the Trusts.

2. Applicants request the exemption to the extent necessary to permit any existing or future registered open-end management investment company or series thereof that (a) is advised by IPCM, IAA or any entity controlling, controlled by or under common control with either of them (each, an ''Adviser''), (b) is in the same group of investment companies as defined in section 12(d)(1)(G) of the Act, (c) invests in shares of other registered open-end investment companies (''Underlying Funds'') in reliance on section 12(d)(1)(G) of the Act, and (d) is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act (each, a ''Fund of Funds''), to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act (''Other Investments'').[1] Applicants state that all Funds of Funds and Underlying Funds are or will be registered with the Commission as open-end management investment companies.

3. Consistent with its fiduciary obligations under the Act, each Fund of Fund's board of trustees or directors will review the advisory fees charged by the Fund of Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Fund may invest.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no registered investment company (''acquiring company'') may acquire securities of another investment company (''acquired company'') if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, ''securities'' means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds to invest in Other Investments. Applicants assert that permitting the Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and conditions in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13812 Filed 6–11–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60054; File No. SR–NYSEArca-2009–45]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To Adopt Rules To Implement the Options Order Protection and Locked/Crossed Market Plan

June 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 May 20, 2009, the NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt rules to implement the Options Order Protection and Locked/Crossed Market Plan (the ''Plan''), and to delete provisions which will no longer be applicable following adoption of the Plan. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt rules to implement the Plan. These rules will amend Rules 6.92 through 6.94 [sic] of the Exchange's rules in their entirety. The proposed rules also will amend various other rules to accommodate the Plan.

Background to the plan and the implementing rules. NYSE Arca filed the current version of the Plan on October 31, 2008.[3] The Plan would replace the current Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (''Old Plan''). The Old Plan requires its participant exchanges to operate a stand-alone system or ''Linkage'' for sending order-flow between exchanges to limit trade-throughs. The Options Clearing Corporation (''OCC'') operates the Linkage system. The Linkage rules provide for unique types of Linkage orders, with a complicated set of requirements as to who may send such orders and under what conditions.

While the Linkage largely has operated satisfactorily, it is under significant strain. When the Commission approved the Old Plan in 2000, average daily volume (''ADV'') in the options market was approximately 2.6 million contracts across all exchanges. Now the ADV has increased to more than 10 million contracts, putting added strain on the ability of market makers to comply with the complex Linkage rules. At the same time, the options markets have been moving towards quoting in pennies, and are quoting in pennies options representing over half the total industry volume. This greatly increases the number of price changes in an option, giving rise to greater chances of trade-throughs and missing markets as market makers send Linkage orders and have to wait for a response.

Experience in the equities markets shows that there is a more efficient way to provide price protection in options. When first implemented, the Linkage represented a vast improvement over the then-current equities price-protection system, which depended on the operation of the Intermarket Trading System (''ITS''). The plan governing ITS imposed long waiting times for filling ITS commitments and a cumbersome method for satisfying trade-throughs. Learning from the shortcomings of ITS, the options Linkage has shorter waiting periods and more efficient trade-through protections.

The equity price-protection mechanisms have now leapfrogged the options Linkage. By adopting Regulation NMS in 2005 the Commission effectively terminated ITS, replacing it with a rules-based price-protection system.[4] The key to Regulation NMS's price-protection provisions is the Intermarket Sweep Order, or ISO. Each equity exchange must adopt rules ''reasonably designed to prevent trade-throughs.''[5] Exempted from trade-through liability is an ISO, which is an order a member sends to an exchange displaying a price inferior to the national best bid and offer (''NBBO''), while simultaneously sending orders to trade against the full size of any other exchange that is displaying the NBBO.[6]

The Regulation NMS rules-based price-protection system is working well. It requires neither a central linkage mechanism nor a complex set of operating rules. It also has eliminated the need for achieving unanimity to change even the most minor aspects of a linkage mechanism. A simple prohibition against most trade-throughs, coupled with the ISO mechanism, has given the equities markets a straightforward system to provide customers with price protection in a fast-moving, high-volume market that is quoted in pennies. NYSE Arca and the other options exchange participants in the Plan intend for the Plan, and the implementing rules, to bring the efficiencies of Regulation NMS to the options market.

Operation of the plan. The Plan effectively would apply the Regulation NMS price-protection provisions to the options markets. Similar to Regulation NMS, the Plan would require participants to adopt rules ''reasonably designed to prevent Trade-Throughs,'' while exempting ISOs from that prohibition.[7] The definition of an ISO is essentially the same as under Regulation NMS,[8] and there are a number of additional exceptions to the trade-through prohibition. Like Regulation NMS,[9] the Plan requires participating

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The October 3, 2008 filing was Amendment No. 3 to the Plan. NYSE Arca initially filed the Plan on September 18, 2007, filed Amendment No. 1 on December 10, 2007, and filed Amendment No. 2 on April 17, 2008.

[4] Release No. 34–51808 (June 9, 2005), 70 F.R. 37496 (June 29 2005).

[5] Regulation NMS Rule 611(a).

[6] Regulation NMS Rule 600(b)(30).

[7] Sections 5(a)(i) and 5(b)(iv) of the Plan.

[8] Section 2(9) of the Plan.

[9] Regulation NMS Rule 611(c) and Section 5(c) of the Plan.

exchanges to take reasonable steps to establish that ISOs meet the requirements of the Plan.

With respect to locked and crossed markets, similar to Regulation NMS the Plan requires its participants to adopt, maintain and enforce rules requiring members: To avoid displaying locked and crossed markets; to reconcile such markets; and to prohibit members from engaging in a pattern or practice of displaying locked and crossed markets.[10] With respect to locked markets, the Plan differs from Regulation NMS in that it specifically permits exceptions to the locked market prohibitions ''as contained in the rules of a Participant approved by the Commission.'' [11]

Description of the implementing rules. The Exchange proposes to define ''Intermarket Sweep Order'' as a new order type in proposed Rule 6.62(z).

Other proposed rule changes would amend and/or replace NYSE Arca's current Linkage rules in Rules 6.92–6.96 as described below:

Rule 6.92(a)—Definitions. This proposed rule incorporates all the operative definitions from the Plan into the NYSE Arca rulebook. With one exception, the parties to the Plan derived all such definitions either from the Old Plan [12] or Regulation NMS.[13] The one exception is the definition of ''complex trade'' in Rule 6.92(a)(4). A ''complex trade'' is exempt from trade-through liability. The exemption in the Old Plan simply refers to complex trades ''as that term may be defined by the Operating Committee from time to time.'' Based on that provision, NYSE Arca had previously adopted current Rule 6.92(4), which is substantially identical among all the options exchanges. We propose to carry that definition into the revised Rule 6.92 unchanged.

Rule 6.94—Order Protection. Paragraph (a) of Rule 6.94 provides that, subject to specified exceptions, NYSE Arca OTP Holders shall not effect trade-throughs. Paragraph (b) provides for the following trade-through exceptions:

• *System Issues:* Rule 6.94(b)(1) implements Section 5(b)(i) of the Plan by establishing an exception for trade-throughs due to system-failures. This is akin to the exception in Regulation NMS for equity securities and permits trading through an Eligible Exchange that is experiencing system problems.[14] The Exchange is proposing ''self-help'' rules similar to its NYSE Arca Equities Rule 7.37(f), adopted pursuant to Regulation NMS.

• *Trading Rotations:* Rule 6.94(b)(2) implements Section 5(b)(ii) of the Plan and carries forward the current trade-through exception in the Old Plan[15] and current Rule 6.94(b)(5) related to the opening of markets. It is the options equivalent to the single price opening exception in Regulation NMS for equity securities.[16] NYSE Arca uses a trading auction to open an option for trading, or to reopen an option after a trading halt. The opening is effectively a single price auction to price the option and there are no practical means to include prices on other exchanges in that auction.

• *Crossed Markets:* Rule 6.94(b)(3) implements Section 5(b)(iii) of the Plan and is the functional equivalent to NYSE Arca Equities Rule 7.37(e)(3) for equity securities. If the best intermarket bid is higher than the best intermarket offer, it indicates that there is some form of market dislocation or inaccurate quoting. Permitting transactions to be executed without regard to trade-throughs in a Crossed Market will allow the market quickly return to equilibrium.

• *Intermarket Sweep Orders (''ISOs''):* Rule 6.94(b)(4) is the ISO exemption and implements Sections 5(b)(iv) and (v) of the Plan. Section 5(b)(iv) of the Plan permits a Participant to execute orders it receives from other Participants or members that are marked as ISO even when it is not at the NBBO. Section 5(b)(v) of the Plan allows a Participant to execute inbound orders when it is not at the NBBO, provided it simultaneously ''sweeps'' all better-priced interest displayed by Eligible Exchanges. These provisions are the options equivalents of the corresponding Regulation NMS equity rules.[17]

• *Quote Flickering:* Rule 6.94(b)(5) implements Section 5(b)(vi) of the Plan and corresponds to the flickering quote exception in Regulation NMS for equity securities.[18] Options quotations change as rapidly, if not more rapidly, than equity quotations. Indeed, they track the price of the underlying security and thus change when the price of the underlying security changes. This exception provides a form of ''safe harbor'' to market participants to allow them to trade through prices that have changed within a second of the transaction causing a nominal trade-through.

• *Non-Firm Quotes:* Rule 6.94(b)(6) implements Section 5(b)(vii) of the Plan and carries forward the current non-firm quote trade-through exception in the Old Plan.[19] By definition, an exchange's quotations may not be firm for automatic execution during this trading state and thus should not be protected from trade-throughs. In effect, these quotations are akin to ''manual quotations'' under Regulation NMS.

• *Complex Trades:* Rule 6.94(b)(7) implements Section 5(b)(viii) of the Plan and carries forward the current complex trade exception in the Old Plan.[20] Complex trades consist of multiple transactions (''legs'') effected at a net price, and it is not practical to price each leg at a price that does not constitute a trade-through.

• *Customer Stopped Orders:* Rule 6.94(b)(8) implements Section 5(b)(ix) of the Plan and corresponds to the customer stopped order exception in Regulation NMS for equity securities.[21] It permits broker-dealers to execute large orders over time at a price agreed upon by a customer, even though the price of the option may change before the order is executed in its entirety.

• *Stopped Orders and Price Improvement:* Rule 6.94(b)(9) implements Section 5(b)(x) of the Plan and would apply if an order is stopped at price that did not constitute a trade-through at the time of the stop. This exception applies to those exchanges that offer a ''Price Improvement Mechanism'' by which members could seek price improvement for that order, even if the market moves in the interim, and the transaction ultimately is effected at a price that would trade through the then currently-displayed market.[22] NYSE Arca does not currently permit these types of options trades, and any transaction-type relying on this exemption would require the Exchange to adopt implementing rules, subject to Commission review and approval.

• *Benchmark Trades:* Rule 6.94(b)(10) implements Section 5(b)(xi) of the Plan and would cover trades executed at a price not tied to the price of an option at the time of execution, and for which the material terms were not reasonably determinable at the time of the

[10] Section 6 of the Plan.

[11] *Id.*

[12] *See, e.g.,* the definitions of ''Broker-Dealer'' in Rule 6.92(a)(3), NBBO in Rule 6.92((a)(10), Non-Firm in Rule 6.92(a)(11), OPRA Plan in Rule 6.92(a)(12), and Participant in Rule 6.92(a)(13).

[13] *See, e.g.,* the definitions of ''Best Bid''/''Best Offer'' in Rule 6.92(a)(1), ''Bid''/''Offer'' in Rule 6.92(a) (2), ''Intermarket Sweep Order (''ISO'')'' in Rule 6.62(t) [sic], and ''Quotation'' in Rule 6.92(a)(16).

[14] *See* Regulation NMS Rule 611(b)(1).

[15] *See* Old Plan Section 8(c)(iii)(E).

[16] *See* Regulation NMS Rule 611(b)(3) under the Securities Exchange Act of 1934, as amended (''Exchange Act'').

[17] *See* Regulation NMS Rules 611(b)(5) and (6).

[18] *See* Regulation NMS Rule 611(b)(8).

[19] *See* Old Plan Section 8(c)(iii)(C).

[20] *See* Old Plan Section 8(c)(iii)(G).

[21] *See* Regulation NMS Rule 611(b)(9).

[22] *See* ISE Rule 723.

commitment to make the trade. An example would be a volume-weighted average price trade, or ''VWAP.'' This corresponds to a trade-through exemption in Regulation NMS for equity trades.[23] NYSE Arca does not currently permit these types of options trades, and any transaction-type relying on this exemption would require the Exchange to adopt implementing rules, subject to Commission review and approval.

Rule 6.95—Locked and Crossed Markets. Proposed Rule 6.95 implements Section 6 of the Plan, which requires Plan participants to establish, maintain and enforce rules that: Require their members reasonably to avoid displaying locked and crossed markets; are reasonably designed to assure reconciliation of locked and crossed markets; and prohibit their members from engaging in a pattern or practice of displaying locked and crossed markets. Section 6 of the Plan further allows an exchange to provide exceptions to these limitations as ''contained in the rules of a Participant approved by the Commission.''

Proposed Rule 6.95(a) contains the general prohibition that NYSE Arca OTP Holders shall reasonably avoid displaying, and shall not engage in a pattern or practice of displaying, any quotations that lock or cross the best bid or offer of another exchange. We propose four exceptions to this general prohibition.[24]

The first exception would apply when we are experiencing system issues, and is similar to the systems issues exception to the trade-through rule. The second exception applies when there is a crossed market, and also is similar to the corresponding trade-through exception. The third exception would apply when an OTP Holder has simultaneously routed an ISO to execute against the full displayed size of any locked or crossed Protected Bid or Protected Offer. The fourth proposed exception applies to locked markets in the following circumstances:

- Neither the locking or locked quote represents, in whole or in part, a customer order; or
- A customer enters a bid or offer that locks a non-customer quotation on another market, and the customer, on a case-by-case basis, authorizes the locking of the other market's quotation.[25]

This fourth exemption recognizes an important distinction between the equities and options markets. Options market makers compete for order flow by disseminating quotations in multiple series with respect to each underlying security, distributing liquidity over a much greater universe of products than in the equity markets. As a result, the options markets are more reliant on market maker quotations to provide liquidity, with fewer customer orders in each series than in each underlying security, where liquidity is concentrated in one product.[26]

With market makers on multiple exchanges constantly updating their quotations in all these series based on mathematical formulae there is a greater likelihood of market maker quotations locking. We believe that in most cases locked market maker quotations are good for the investing public. Effectively locked markets provide a ''zero spread,'' allowing market participants to buy and sell an option at the same price. On NYSE Arca these quotations are firm, and are fully executable on an automated basis.

We recognize that locked markets are more complicated where one or both of the locking quotations represents a customer order. Where there is contra-side market interest willing to trade with a customer, the customer order should be filled. Thus, we would not exempt from the locked market prohibition situations involving customer orders unless the customer entering the locking order specifically authorizes the lock on a case-by-case basis.[27]

The Exchange will not implement this proposed exception to the locked market prohibition unless the Exchange can identify that an order on another exchange is for the account of a customer. The options exchanges currently are working on a method to so identify customer quotations through the Options Price Reporting Authority. Absent the ability to identify a customer quote as part of an exchange's BBO, NYSE Arca will assume that the quote represents, in whole or in part, a customer order. That is, NYSE Arca will not permit its members to avail themselves of this exemption unless another exchange has informed the Exchange that it will designate all customer orders as such at OPRA, and such exchange's quotation does not contain such designation. If an exchange opts not to identify its customer quotations, the Exchange will treat all of that exchange's quotations as customer orders and, absent application of another exception, will not permit locks of such quotations.

The Exchange also proposes that the exemption is only operative for as long as the Exchange is willing to identify Customer orders in its own quote.

Temporary Rule 6.96—temporary rule governing P and P/A orders. When the Plan and implementing rules become operative it is possible that not all the options exchanges will be functionally able to operate pursuant to the Plan. Thus, in order to ensure there is full intermarket trade-through protection during this interim period, we propose to retain certain minimum trade-through rules based on the Old Plan until all the options exchanges are operating pursuant to the Plan. When that occurs we will file a rule change with the Commission to delete Temporary Rule 6.96.

Temporary Rule 6.96 provides that NYSE Arca will continue to accept Principal Acting as Agent (''P/A'') and Principal Orders from options exchanges which have not fully discontinued use of the OCC managed routing hub. The handling of these orders will be subject to Temporary Rule 6.96.

Amendment of other NYSE Arca rules to accommodate the plan. We propose to amend four NYSE Arca rules in addition to those described above.[28] First, Rule 6.33, Registration of Market Makers, allows certain Market Makers to act in an agency capacity for the purpose of sending Principal Acting as Agent (''P/A'') Orders through the Linkage. With the termination of the Linkage such provision no longer will be necessary and we thus propose to delete this provision.

Second, Rule 6.35, Appointment of Market Makers, Commentaries .02–.04 described Intermarket Linkage Market Makers (''IMM'') and described when and how IMMs would be appointed, and the procedures that governed their appointment. With the termination of the Linkage such provisions will no longer be necessary and we thus propose to delete them.

Third, Rule 6.76A, Order Execution—OX, notes that orders routed away from the Exchange are subject to the applicable trading rules of the relevant Market Center and the relevant Linkage Plan rules. With the termination of the

[23] *See* Regulation NMS Rule 611(b)(7).

[24] *See* e-mail from Andrew Stevens, Chief Counsel—U.S. Equities & Derivatives, NYSE Euronext, to David Liu, Assistant Director, Division of Trading and Markets (''Division''), Commission, dated May 29, 2009.

[25] *See id.*

[26] *See id.*

[27] We can envision a customer authorizing a lock when the fees associating with trading against the locked market make the execution price uneconomical to the customer.

[28] *See* e-mail from Andrew Stevens, Chief Counsel—U.S. Equities & Derivatives, NYSE Euronext, to David Liu, Assistant Director, and Rebekah Liu, Special Counsel, Division, Commission, dated June 1, 2009.

Linkage, such a reference is no longer necessary and we thus propose to delete this reference to the Linkage Plan.[29]

Finally, Rule 10.12, Minor Rule Plan, describes certain violations which are part of an expedited disciplinary process, and their attendant fines. The exchange proposes to modify those violations which are related to the Linkage and make them applicable to the Plan and the proposed Rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''). The basis under the Act for this proposed rule change is found in Section 6(b)(5) of the Act,[30] in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. In particular, the Exchange believes that adopting rules that implement the Plan will facilitate the trading of options in a national market system by establishing more efficient protection against trade-throughs and locked and crossed markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[29] *See id.*

[30] 15 U.S.C. 78f(b)(5).

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 No. SR–NYSEArca–2009–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing 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–NYSEArca–2009–45 and should be submitted on or before July 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[31]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13811 Filed 6–11–09; 8:45 am]

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[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60053; File No. SR–MSRB–2009–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Termination of the CDINet System

June 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 May 29, 2009, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board''), 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 substantially prepared by the MSRB. The MSRB has filed the proposal as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is proposing to terminate the MSRB's CDINet system for material event notices received pursuant to Exchange Act Rule 15c2–12 on July 1, 2009. The text of the proposed rule change is available on the MSRB's Web site at (*http://www.msrb.org/msrb1/sec.asp*), at the MSRB's principal office, and at the Commission's Public Reference Room. The full text of MSRB facilities is available at *http://www.msrb.org/msrb1/rulesandforms.*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

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 MSRB 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 MSRB 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 proposed rule change would terminate the MSRB's CDINet system for material event notices received pursuant to Exchange Act Rule 15c2–12 on July 1, 2009. CDINet is operated as a system of the MSRB's Municipal Securities Information Library system. The Commission has previously approved the establishment of a continuing disclosure service of the MSRB's Electronic Municipal Market Access system (''EMMA''), which will be placed into operation on July 1, 2009 and will replace CDINet.[5]

In addition, the MSRB expects to commence operation of a pilot phase of the continuing disclosure service (the ''continuing disclosure pilot'') on June 1, 2009. The continuing disclosure pilot would permit voluntary submission and public dissemination of continuing disclosure documents prior to the commencement of operation of the permanent EMMA continuing disclosure service. The MSRB would view electronic submissions of material event notices to the continuing disclosure pilot as having been submitted to the MSRB for purposes of any existing continuing disclosure undertakings entered into consistent with Exchange Act Rule 15c2–12 pursuant to which an issuer or obligated person has undertaken to provide such documents to the MSRB. The MSRB urges, but does not require, submitters currently using CDINet in connection with their material event notice filings to instead make submissions on or after June 1, 2009 to the continuing disclosure pilot, solely in electronic format, upon the launch of the continuing disclosure pilot until such time as all submissions must be made to the permanent EMMA continuing disclosure service.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[6] which provides that the MSRB's rules shall:

> 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act. The replacement of CDINet with the continuing disclosure service of EMMA will remove impediments to and help perfect the mechanisms of a free and open market in municipal securities, assist in preventing fraudulent and manipulative acts and practices, and will in general promote investor protection and the public interest by ensuring significantly more efficient submissions of a broader, more comprehensive array of continuing disclosure documents to the MSRB and the broader, more efficient dissemination of such continuing disclosure documents to the public through the EMMA Web portal and to subscribers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board 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. CDINet and the subscription service provided thereunder will be replaced on July 1, 2009 by the continuing disclosure service of EMMA as a source of continuing disclosure documents to the general public through the EMMA Web portal and to subscribers through a continuing disclosure subscription service. The continuing disclosure subscription service will make continuing disclosure documents available on an equal basis without imposing restrictions on subscribers from re-disseminating such documents or otherwise offering value-added services and products based on such documents on terms determined by each subscriber.

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 on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest), the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (f)(6) of Rule 19b–4 thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

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–MSRB–2009–07 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–MSRB–2009–07. This file number should be included on the

[5] *See* Exchange Act Release No. 59061 (December 5, 2008), 73 FR 75778 (December 12, 2008) (File No. SR–MSRB–2008–05).

[6] 15 U.S.C. 78o–4(b)(2)(C).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). The MSRB has satisfied the five-day pre-filing requirement of Rule 19b–4(f)(6)(iii).

[9] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

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 MSRB. 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–MSRB–2009–07 and should be submitted on or before July 6, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13810 Filed 6–11–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60046; File No. SR–Phlx––2009–44]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Cancellation Fee

June 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 June 1, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to: (i) Increase the Cancellation Fee from $1.10 per order to $2.10 per order; (ii) modify the Cancellation Fee by limiting its applicability to cancelled AUTOM-delivered customer orders instead of all cancelled AUTOM-delivered orders; and (iii) specify the types of order activity that are exempt from the Cancellation Fee. The Exchange also proposes to amend an endnote to reflect recently approved Exchange By-Laws and a Rule.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Cancellation Fee to assist the Exchange in recouping costs associated with a large number of order cancellations. Specifically, the costs arise from increased bandwidth and capacity concerns related to increased message traffic.

The Exchange proposes to increase the Cancellation Fee from $1.10 per order for each cancelled AUTOM-delivered [3] order in excess of the number of orders executed on the Exchange by a member organization in a given month to $2.10 per order. The Exchange believes this increase will cover costs to the Exchange associated with system congestion resulting from a rising number of cancellation orders.

Currently, the Exchange assesses a Cancellation Fee of $ 1.10 per order on member organizations for each cancelled AUTOM-delivered order in excess of the number of orders executed on the Exchange by that member organization in a given month. The Exchange calculates the Cancellation Fee by aggregating all orders and cancels received by the Exchange and totaling those orders by member organization. At least 500 cancellations must be made in a given month by a member organization in order for a member organization to be assessed the Cancellation Fee. The Cancellation Fee is not assessed in a month in which fewer than 500 AUTOM-delivered orders are cancelled. Simple cancels and cancel-replacement orders are the types of orders that are counted when calculating the number of AUTOM-delivered orders.[4] Also, pre-market cancellations [5] are not included in the calculation of the Cancellation Fee as well as Complex Orders [6] that are submitted electronically.

The Exchange proposes to modify the Cancellation Fee to limit its applicability to cancelled AUTOM-delivered customer [7] orders instead of all cancelled AUTOM-delivered orders. This proposal would assess the $2.10

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. See Exchange Rule 1080. See also proposed rule change SR–Phlx–2009–32 which proposes to amend Rule 1080 to state, ''AUTOM and AUTO–X were replaced by the Phlx XL System, such that references to both terms refer to Phlx XL.'' Therefore, in light of proposed rule change SR–Phlx–2009–32, references throughout this rule filing to AUTOM-delivered orders would be referenced as electronically delivered orders upon the approval of SR–Phlx–2009–32.

[4] A cancel-replacement order is a contingency order consisting of two or more parts which require the immediate cancellation of a previously received order prior to the replacement of a new order with new terms and conditions. If the previously placed order is already filled partially or in its entirety the replacement order is automatically canceled or reduced by such number. *See* Exchange Rule 1066(c)(7).

[5] *See* Securities Exchange Act Release Nos. 53226 (February 3, 2006), 71 FR 7602 (February 13, 2006) (SR–Phlx–2005–92); and 53670 (April 18, 2006), 71 FR 21087 (April 24, 2006) (SR–Phlx–2006–21).

[6] A Complex Order is composed of two or more option components and is priced as a single order (a ''Complex Order Strategy'') on a net debit or net credit basis.

[7] *See e.g.* Exchange Rule 1080(b)(i)(A) ''* * * is any order entered on behalf of a public customer, and does not include any order entered for the account of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.''

proposed Cancellation Fee on cancelled customer orders that are in excess of the number of customer orders executed on the Exchange by a member organization in a given month. The Exchange believes that by modifying the cancellation calculation to customer orders, the Exchange would be able to fairly allocate costs among members according to system use.

The Exchange also proposes to amend the types of order activity that are exempt from the Cancellation Fee. As previously stated, currently the Cancellation Fee is not assessed in a month in which fewer than 500 AUTOM-delivered orders are cancelled; only simple cancels and cancel-replacement orders are the types of orders that are counted when calculating the number of AUTOM-delivered orders. Also, currently pre-market cancellations and Complex Orders that are submitted electronically are not included in the calculation of the Cancellation Fee.

The Exchange proposes to continue to exempt fewer than 500 AUTOM-delivered orders that are cancelled, but proposes to amend that provision to state that it will exempt fewer than 500 AUTOM-delivered customer orders that are cancelled in a month. Additionally, the Exchange proposes to exempt unfilled Immediate-or-Cancel [8] customer orders and cancelled customer orders that improved the Exchange's prevailing bid or offer (PBBO) market at the time the customer orders were received by the Exchange. The Exchange believes that these types of order activity should be exempt from the Cancellation Fee because the activity does not contribute excessively to system congestion. The pre-market cancellations and Complex Orders that are submitted electronically will continue to not be included in the calculation of the Cancellation Fee.

As previously stated, the Exchange currently exempts these types of order activities. However, the Exchange proposes to specifically mention the pre-market cancellation exemption in the Fee Schedule by noting that pre-market cancellations are exempt.[9] The Exchange inadvertently excluded such language from the Fee Schedule in the past and believes that the addition of such language will clarify the Fee Schedule. Similarly, the Exchange still believes that the pre-market cancellation and Complex Order activity do not excessively contribute to increased order flow traffic.

Finally, the Exchange proposes to amend endnote 70 to reflect the recently approved changes to proposed rules SR–Phlx–2009–23 [10] and SR–Phlx–2009–17,[11] which amended Exchange By-Law Article VI, Sections 11–1 and 11–3 and Exchange Rule 960.9 to rename certain standing committees and eliminate reference to a Hearing Officer. These proposed amendments to endnote 70 will conform the endnote to the Exchange's current By-Laws and Rules.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act [12] in general, and furthers the objectives of Section 6(b)(4) of the Act [13] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Exchange believes that the proposed amendments to the Cancellation Fee will continue to fairly allocate costs among members according to system use as well as ease system congestion.

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

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [14] and paragraph (f)(2) of Rule 19b–4 [15] 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–Phlx–2009–44 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–Phlx–2009–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–44 and should be submitted on or before July 6, 2009.

[8] An Immediate-or-Cancel (IOC) order is a limit order that is to be executed in whole or in part upon receipt. Any portion not so executed shall be cancelled.

[9] The Complex Order exemption is currently specified in the Fee Schedule.

[10] *See* Securities Exchange Act Release No. 59924 (May 14, 2009), 74 FR 23759 (May 20, 2009) (SR–Phlx–2009–23).

[11] *See* Securities Exchange Act Release No. 59794 (April 20, 2009), 74 FR 18761 (April 24, 2009) (SR–Phlx–2009–17).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13809 Filed 6–11–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60036; File No. SR–DTC–2009–09]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish an Alternate Choice in DTC's Profile Modification System Indemnity Insurance Program

June 3, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 11, 2009, The Depository Trust Company (''DTC'') 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 DTC. DTC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act[2] and Rule 19b–4(f)(4)[3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the rule change is to establish an alternate choice in DTC's Profile Modification System Indemnity Insurance Program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC 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

DTC's Profile Modification System (''Profile'') is an electronic communication hub between transfer agents that participate in the Direct Registration System (''DRS''), which transfer agents are Limited Participants (''Limited Participants'') of DTC, and broker-dealers that participate in DRS, which broker-dealers are DTC Participants (''Participants;'' Participants together with Limited Participants are collectively referred to as ''Users'').[5] Profile allows Participants to submit an investor's instruction to move a share position from the investor's DRS account at the transfer agent to the Participant's account at DTC (''Electronic Participant Instruction''). Profile also allows Limited Participants to submit an investor's instruction to move its share position from the Participant's account at DTC to the DRS account at the transfer agent (''Electronic Limited Participant Instruction;'' Electronic Limited Participant Instruction and Electronic Participant Instruction are collectively referred to as ''Electronic Instructions''). A User submitting an Electronic Instruction through Profile is required to agree to a Participant Terminal System (''PTS'') screen indemnity (''Screen Indemnity'').[6]

On August 22, 2005, the Commission approved a rule filing establishing the DTC Profile Indemnity Insurance Program (''PIP''),[7] on as an alternative to the existing DTC Profile Surety Program (''PSP'').[8] Profile users who agree to the Screen Indemnity have the option to procure Profile Indemnity Insurance (''Insurance'') relating to a particular transaction according to the value of each individual securities transaction. The Insurance option provides a coverage limit of $25 million per transaction with an annual aggregate limit of $100 million. In addition to any pass-through fee from the insurer, DTC charges users participating in PIP an annual administration fee of $250 and a $27.50 per transaction fee.

DTC is proposing to provide Profile users an option to procure insurance with a different coverage limit than that currently offered (''PIP II''). The coverage limit for PIP II will be $7.5 million per transaction with an annual aggregate limit of $15 million. PIP II users will be required to pay an annual premium of $6,000 to an insurance provider and a DTC administration fee of $250. The intent of this program is to provide an alternative insurance option for Profile users with high volume and moderate value and also for contingency planning if a provider is no longer able to provide insurance or surety. Users will be permitted to participate with each provider but will continue to be required to select only one provider per Profile transaction.

The insurance company issuing the insurance policy will either be a company selected by DTC as the administrator of such insurance program, or an insurance company selected by the User. If a User elects to use an insurance company other than the one DTC has selected, the insurance company selected must issue its insurance policy in a form consistent with the policy issued by the insurance company selected by DTC.

The proposed rule change is consistent with Section 17A of the Act,[9] as amended, because it modifies an existing service by establishing an alternate choice for Profile insurance users to provide a broader range of options to safeguard transactions processed within Profile.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact or impose any burden on competition.

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[16] 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)(4).

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] For a description of Profile, see Securities Exchange Act Release No. 41862 (September 10, 1999), 64 FR 51162 (September 21, 1999) (order approving implementation of Profile).

[6] The Screen Indemnity protects, among others, the party delivering the share position from liability in connection with the transaction arising from a User's breach of the representation of authority and consent to initiate the transaction. For a broader description of the Screen Indemnity, see Securities Exchange Act Release No. 42704 (April 19, 2000), 65 FR 24242 (April 25, 2000) (order approving modification of Profile to incorporate use of the Screen Indemnity).

[7] Securities Exchange Act Release No. 42422 (September 14, 2005), 70 FR 55196 (September 20, 2005).

[8] Under PSP, each user of Profile that agrees to the Screen Indemnity must procure a surety bond to back its obligations under such indemnity (''Surety Bond''). Participation in PSP requires the payment of an annual premium of $3,150 to a surety provider and a DTC administration fee of $250. The current PSP surety provider provides for a coverage limit of $3 million per transaction with an annual aggregate limit of $6 million. The Commission approved a rule filing establishing an alternate to PSP in June 2008 (''PSP II''). Securities Exchange Act Release No. 58042 (June 26, 2008), 73 FR 39067 (July 8, 2008).

[9] 15 U.S.C. 78q–1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act [10] and Rule 19b–4(f)(4) [11] thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty 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–DTC–2009–09 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–DTC–2009–09. 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 filings also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtcc.com/legal/rule_filings/dtc/2009-09.pdf.* 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–DTC–2009–09 and should be submitted on or before July 6, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13808 Filed 6–11–09; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 17 CFR 240.19b–4(f)(4).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59997; File Nos. SR–NYSE–2009–50 and SR–NYSEAmex–2009–20]

Self-Regulatory Organizations; New York Stock Exchange LLC and NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Changes Relating to Comparison of Executed Transactions

May 28, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on May 19, 2009, New York Stock Exchange LLC (''NYSE'') and NYSE Amex LLC (''NYSE-Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes as described in Items I and II below, which Items have been prepared primarily by NYSE and NYSE-Amex (collectively, ''Exchanges''). The Exchanges filed the proposed rule changes pursuant to Section 19(b)(3)(A)(iii) of the Act [4] and Rule 19b–4(f)(6) thereunder [5] so that the proposals were effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchanges propose to amend NYSE Rule 134 (Differences and Omissions-Cleared Transactions) and NYSE-Amex Rule 134 (NYSE Amex Equities. Differences and Omissions-Cleared Transactions) to provide for certain technical procedures that the Exchanges use in the comparison stage of trade settlement.

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 Exchanges included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of those statements may be examined at the places specified in Item IV below. The Exchanges have prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

NYSE operates the On-Line Comparison System (''OCS''), which provides the first step for the settlement of securities transactions on the Exchanges. OCS conducts comparison processing, which includes matching initial trade submissions, correction processing, omnibus processing, and questioned trade (''QT'') resolution. OCS interacts with the Exchanges' members and member organizations in their roles as clearing firms, brokers, and Designated Market Making Units (''DMM Units'') and is linked internally to the Exchanges' trading systems and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A)(iii).

[5] 17 CFR 240.19b–4(f)(6).

externally to the National Securities Clearing Corporation.[6]

For all Exchange-based transactions, NYSE Rule 132.30 (Comparison and Settlement of Transactions Through A Fully-Interfaced or Qualified Clearing Agency) and NYSE-Amex Equities Rule 132.30 (Comparison and Settlement of Transactions Through A Fully-Interfaced or Qualified Clearing Agency) require members and member organizations to submit data elements to OCS.[7] This data is then used to compare the terms of the two sides (*i.e.,* buy and sell) of a trade. When the two sides match, the trade is successfully compared and will move on to the subsequent stages of settlement processing. For automated trades, this data is recorded electronically, which reduces the error rate and produces ''clean'' or ''locked-in'' trades. For manual trades, data is submitted by both sides of the trade through their clearing firms.

To facilitate the comparison process, the Exchanges utilize omnibus account designations to record trade data.[8] Using omnibus account designations allows for universal contras for one trade side, thereby reducing the number of different data elements that have to be independently recorded into a broker's hand-held device or written on a Floor report for a trade, which also reduces the likelihood of error.

Despite the increased automation of the trading process and the use of universal designations, there are still a few trades that do not successfully compare. That is, all the trade data elements from the buy and sell sides do not match. This can occur when the trade is done manually and there is an error made in submitting the trade information from one or both sides. It can also occur on electronic trades if there are software problems or systemic problems that cause incorrect information to be filed thus causing inaccurate information to be transmitted. When trades do not compare, a QT is created and then goes through the ''QT process.'' This process mandates that clearing member organizations must resolve any trades that have not been successfully compared by the first business day after the trade date (''T+1'').[9]

The Exchanges note that the incidence of QTs is very low both in terms of absolute numbers and as a percentage of daily trades. For example, for the period January 2 through January 8, 2009, there was an average of just 337 QTs per day at the NYSE on a T+1 basis, spread among the approximately 120 clearing firms and six DMM units. These are then researched and almost all of these are reconciled by the second evening after the trade date (''T+2''). As a result, on average there are typically less than three unresolved trades per month. There is an average of over 4 million trades each day on NYSE.

One of the functions of OCS is to reconcile the balances in the omnibus accounts at the end of each trading day. The accounting procedure used for trade resolution requires that an omnibus account must net to zero at the end of any trading session. That is, there cannot be an unassigned security or money position in an omnibus account since that would, in effect, assign the open balance to the Exchange where the transaction occurred. The Exchanges, therefore, propose to assign on T+2 any open balance in any of the omnibus accounts it uses to compare trades to either a DMM Unit or the member organization that has been identified as the clearing firm for one side of the unresolved trade. A clearing firm will be assigned as the default contra side in a trade that resulted from an execution involving e-Quotes, which are trades involving Floor broker agency interest files.[10] The DMM Unit will be assigned when there is an open imbalance in an omnibus account that resulted from the execution of orders that did not involve an e-Quote, regardless of whether the DMM was involved in the transaction.

Specifically, the Exchanges propose to add language to their respective Rule 134 to enable them to assign either a DMM Unit or an e-clearing member organization as the contra party to any uncompared transaction or unresolved omnibus account imbalance remaining in OCS at the close of business on the second business day after the trade date.

Since the number of QTs that remain unresolved by the end of the second day after the initial trade date is extremely low, the Exchanges expect that there will be very few assignments of a default contra side involving clearing firms or DMM Units that will be made under the proposed revisions of their respective Rule 134.

The Exchanges state that the proposed rule changes are consistent with their obligations under Section 6(b)(5) of the Act,[11] which requires the rules of a registered national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest. The Exchanges believe that the proposed rule changes comply with these requirements because the changes enhance the comparison process at the Exchanges, thereby supporting the timely settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchanges do 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

The Exchanges did not solicit or receive written comments with respect to the proposed rule change. The Exchanges will notify the Commission of any comments they receive.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule changes were effective upon filing with the Commission pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder[13] because each of the proposed rule changes does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest.

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter

[6] The National Securities Clearing Corporation (''NSCC'') is a clearing agency registered with the Commission under Section 17A of the Securities Exchange Act of 1934. NSCC provides centralized clearance and settlement services for equity security trades for U.S. broker-dealers.

[7] *See also* NYSE Rule 130(c) and NYSE-Amex Equities Rule 130(c) (Overnight Comparison of Exchange Transactions).

[8] An ''omnibus account'' is an account in which the transactions of multiple individual members are combined.

[9] NYSE Rule 134(a) and NYSE-Amex Equities Rule 134(a). These rules also set forth the procedures and timeframes to resolve QTs.

[10] NYSE Rule 70(a)(i) and NYSE-Amex Equities Rule 70(a)(i).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6).

[14] *Id.*

[15] 17 CFR 240.19b–4(f)(6)(iii).

time if such action is consistent with the protection of investors and the public interest. The Exchanges have asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing.

The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will enable the Exchanges to clarify and strengthen their process to resolve uncompared transactions or unresolved account imbalances without undue delay while still affording interested parties the opportunity to submit comments or concerns to the Commission regarding these proposals. The new processes should instill greater confidence among the Exchanges' members and investors that such situations will be handled in an orderly and expeditious manner. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSE-2009–50 or NYSEAmex-2009–20 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–NYSE–2009–50 or NYSEAmex–2009–20. At least one of these file numbers 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 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the Exchanges principal offices and on NYSE's Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2009–50 or NYSEAmex–2009–20 and should be submitted on or before July 6, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–13807 Filed 6–11–09; 8:45 am]

BILLING CODE 8010–01–P

[16] For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f). The Exchange provided the Commission written notice of its intent to file the proposed rule change at least five business days prior to filing.

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6660]

Culturally Significant Objects Imported for Exhibition Determinations: ''Tim Burton''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Tim Burton,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Modern Art, New York, NY, from on or about November 22, 2009, until on or about April 26, 2010, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* (202–453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 5, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs,

Department of State.

[FR Doc. E9–13878 Filed 6–11–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6659]

State-68, Office of the Coordinator for Reconstruction and Stabilization Records

SUMMARY: Notice is hereby given that the Department of State proposes to alter an existing system of records, Office of the Coordinator for Reconstruction and Stabilization Records, State-68, pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a) and Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on June 5, 2009.

It is proposed that the current system will retain the name ''Office of the Coordinator for Reconstruction and Stabilization Records.'' It is also proposed that due to the expanded scope of current system, the altered system description will include

revisions and/or additions to the following sections: Categories of Individuals Covered by the Systems, Categories of Records in the System, Purpose, Routine Uses of Records Maintained in the System, Safeguards, and Retrievability. Changes to the existing system description are proposed in order to reflect more accurately the Office of the Coordinator for Reconstruction and Stabilization Records participation in the Civilian Response Corp mission.

Any persons interested in commenting on the altered system of records may do so by submitting comments in writing to Margaret P. Grafeld, Director; Office of Information Programs and Services; A/GIS/IPS; Department of State, SA–2; 515 22nd Street, Washington, DC 20522–8001. This system of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The altered system description, ''Office of the Coordinator for Reconstruction and Stabilization Records, State-68,'' will read as set forth below.

Dated: June 5, 2009.

Steven J. Rodriguez,

Deputy Assistant Secretary for Operations, Bureau of Administration, Department of State.

STATE-68

SYSTEM NAME:

Office of the Coordinator for Reconstruction and Stabilization Records

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

Department of State, SA–3, 2121 Virginia Avenue, NW., Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been or will be involved in international Reconstruction and Stabilization activities and individuals who offer to participate in potential future overseas reconstruction and stabilization activities in a foreign deployment or in a management function based in Washington, DC, and/or in domestic training and civilian-military exercises.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Law 108–447, Div B, Title IV, § 408, 118 Stat. 2904 (Consolidated Appropriations Act, 2005).

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in this database system include: Name; social security number; date of birth; citizenship; contact information such as mailing addresses; e-mail, and/or phone numbers; passport number, date of expiration, place of issuance; driver's license number, date of expiration and state where issued; personnel's height; weight; hair color; eye color; blood type; language skills; military service, if any; prior related experience; security clearance status; medical clearance; inoculation/immunization record; and personal gear/clothing sizes.

PURPOSE:

The information in this system will be used to assist the Office of the Coordinator for Reconstruction and Stabilization to carry out its mandate to lead, coordinate, and institutionalize international reconstruction and stabilization activities of the U.S. Government.

The database shall be compiled and used to categorize and identify individuals from various U.S. Government Agencies to participate in Civilian Response Corps missions and other international Reconstruction and Stabilization activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in the Office of the Coordinator for Reconstruction and Stabilization Records may be shared:

With any and all U.S. Government Agencies involved in Reconstruction and Stabilization operations (including, but not limited to: United States Agency for International Development, Department of Justice, Department of Homeland Security, Department of Commerce, Department of Agriculture, Department of Health and Human Services and Department of Treasury) in order to coordinate U.S. efforts in international Reconstruction and Stabilization, determine which members are available and best qualified for particular missions, and manage and select individuals who have been hired or agreed to deploy oversees in support of Reconstruction and Stabilization efforts of the U.S. Government;

With United Nations, NATO or similar international organizations, for the purpose of coordinating personnel engaged in specific Reconstruction and Stabilization activities;

With U.S. and NATO military installations for the purpose of sharing information necessary for security checks and to obtain access to military facilities, including manifesting on military aircraft;

In addition, the Department of State may disclose records from this system to entities outside the Department:

To provide other Federal agencies information needed in the performance of their official duties to support the functions for which the records were intended, i.e., reconstruction and stabilization activities;

To provide information to other Federal agencies, state governments, foreign governments and international organizations where employees are being considered for detail, assignment or secondment;

To disclose information to officials of foreign governments and other U.S. Government Agencies for clearance before a Federal employee is assigned to that country as well as for the procurement of necessary services for American personnel assigned overseas, such as permits of free entry and identity cards;

To provide information on employees for the benefit of these employees to attorneys, union representatives or other persons designated in writing by those employees who are the subject of the information to represent them in complaints, grievances, or other litigation;

The Department of State periodically publishes in the **Federal Register** its standard routine uses that applies to all its Privacy Act systems of records. These notices appear in the form of a Prefatory Statement. These standard routine uses apply to the Office of the Coordinator for Reconstruction and Stabilization Records, State-68.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media; hard copy.

RETRIEVABILITY:

Individual's name, designated specialty in international reconstruction and stabilization operations, international reconstruction and stabilization training, foreign language skills, and pertinent skills.

SAFEGUARDS:

All Department of State employees and contractors with authorized access have undergone a thorough background security investigation. All users are given information system security awareness training, including the procedures for handling Sensitive But Unclassified and personally identifiable information. Annual refresher training is mandatory. Before being granted access to Office of the Coordinator for Reconstruction and Stabilization

Records, a user must first be granted access to Department of State computer systems.

Remote access to the Department of State network from non-Department owned systems is only authorized through a Department-approved access program. Remote access to the network is configured with Office of Management and Budget Memorandum M–07–16 security requirements of two factor authentication and time-out functions.

Access to the Department and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured filing cabinets or in restricted areas, access to which is limited to authorized personnel. Servers are stored in Department of State secured facilities in cipher locked server rooms. Access to electronic files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained with published record disposition schedules of the Department of State as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of Information Programs and Services, A/GIS/IPS, SA–2, Department of State, 515 22nd Street NW., Washington, DC 20522–8100.

SYSTEM MANAGER AND ADDRESS:

Office of the Coordinator for Reconstruction and Stabilization, Department of State, SA–3, 2121 Virginia Avenue NW., Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Office of the Coordinator for Reconstruction and Stabilization might have records pertaining to them should write to the Director, Office of Information Programs and Services, A/GIS/IPS, SA–2, Department of State, 515 22nd Street NW., Washington, DC 20522–8100. The individual must specify that he or she wishes the records of the Office of the Coordinator for Reconstruction and Stabilization to be checked. At a minimum, the individual should include: Name; date and place of birth; current mailing address and zip code; signature; a brief description of the circumstances that caused the creation of the record (including the city and/or country and the approximate dates) which gives the individual cause to believe that the Office of the Coordinator for Reconstruction and Stabilization has records pertaining to him or her.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to, or to amend records pertaining to, themselves should write to the Director, Office of Information Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information that is obtained from the individual who is the subject of the records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(k)(6) records in this system of records may be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(l), (e)(4)(G), (H), and (I) and (f).

[FR Doc. E9–13877 Filed 6–11–09; 8:45 am]

BILLING CODE 4710–24–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2009–0092]

Notice of Request for Continuation of Data Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT) intention to extend the use of OMB# 2105–0557 Applicant Background Questionnaire.

DATES: Comments on this notice must be received by August 11, 2009.

ADDRESSES: You may submit comments identified by DOT Docket Number DOT–OST–2009–0092 by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590–001, between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or you may visit Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Room W12–140, Washington, DC 20590, between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Deborah Perkins, Departmental Office of Human Resources, Office of the Secretary, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590, (202) 366–9447.

SUPPLEMENTARY INFORMATION:

Title: Applicant Background Questionnaire.

OMB Control Number: OMB# 2105–0557.

Type of Request: Renewal of a previously approved document.

Abstract: The purpose of the collection is to standardize the collection of race, ethnicity, sex, national origin, and disability status from applicants for positions within all DOT Operating Administrations. This information will assist the DOT in monitoring programs and will be the basis for several different reports required by statute.

Background: The DOT is required to analyze the civil rights impact(s) of policies, actions, or decisions that affect Federally conducted programs and activities, and the DOT workforce. In order to assess the civil rights impact, data on recruitment, employment, and diversity must be analyzed in a consistent manner with respect to the race, ethnicity, sex, national origin, disability status, and age of applicants and employees.

The goal of this collection is to provide a method for the comprehensive collection of race, ethnicity, sex, national origin, and disability status and thereby reduce the burden on applicants and employees to provide this type of information.

Respondents: Employees upon initial hire and applicants for positions.

Estimated Number of Respondents: 93,000.

Estimated Total Burden on Respondents: 3 minutes.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility as described; (b) the accuracy of the Department's estimate of burden of the proposed collection of information, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate, automated, electronic, mechanical or other technology. Comments should be addressed to the address in the preamble. All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

Issued in Washington, DC on June 1, 2009.

Nancy A. Mowry,

Director, Departmental Office of Human Resource Management.

BILLING CODE 4910–9X?–P

OMB No. 2105-0557
Expiration: xx/xx/xxxx

U.S. DEPARTMENT OF TRANSPORTATION
APPLICANT BACKGROUND QUESTIONNAIRE

The U.S. Department of Transportation requests that you voluntarily complete this form to assist the agency in evaluating and improving its efforts to publicize job openings and to encourage employment applications from a diverse group of qualified candidates. The Department will use the data you supply to determine how many applicants are from different groups and how many of these applicants are qualified for the job in question. The Department will then assess the effectiveness of specific outreach efforts and means of communicating information on job vacancies in light of this information. Personal identifying information will not be included in the tabulation of data.

The completion of this form is voluntary. This information will have no effect on the processing of your application or hiring decisions.

PRIVACY ACT INFORMATION: This information is provided pursuant to Public Law 93-579 (Privacy Act of 1974), December 31, 1974, for individuals completing Federal records and forms that solicit personal information. Authority: Section 7201 of title 5 of the U.S. Code and Section e-16 of title 42 of the U.S. Code

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information is 2105-0557. The public reporting burden for this collection of information is estimated to average 4 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the U.S. Department of Transportation, Departmental Human Resources Office, 1200 New Jersey Avenue, SE, Washington, DC 20590; and the Office of Management and Budget, Paperwork Reduction Project, Washington, D.C. 20503.

Solicitation of this information is in accordance with "Federal Equal Opportunity Recruitment Program" (FEORP), found in part 720 of title 5, Code of Federal Regulations.

PLEASE COMPLETE THE FOLLOWING:

Name:	**Sex:** __ Male __ Female

Title, Grade, and Announcement Number of position for which you are applying:

Do you have a disability? ___ Yes ___ No

If yes, please provide information on your disability by selecting the appropriate category:

__ I do not chose to identify my disability
__ Total Deafness
__ Blind/uncorrectable visual impairment
__ Missing extremity(ies)
__ Partial paralysis
__ Complete paralysis
__ Convulsive disorder
__ Mental retardation
__ Mental or emotional illness
__ Severe distortion of limbs or spine
__ I have a disability but it is not listed

Please select one or more racial/and or national origin categories with which you most closely identify:

__ American Indian or Alaska Native	A person having origins in any of the original peoples of North and South America (including Central America), and who maintains cultural identification through tribal affiliation or community attachment.
__ Asian	A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, Philippine Islands, Thailand, and Vietnam.
__ Black or African American	A person having origins in any of the black racial groups of Africa.
__ Hispanic	A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race)
__ Native Hawaiian or other Pacific Islander	A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
__ White	A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

How did you find out about this vacancy? (Select all that apply)

____ 1. Magazine/Newspaper
_____ 2. Radio/Television Broadcast
_____ 3. DOT Human Resources Office
_____ 4. State Employment Office
_____ 5. Government Recruitment at School
_____ 6. Attendance at Conference, Meeting, or Job Fair (Specify: _____)
_____ 7. Federal, State or Local Job Information Center
_____ 8. Friend or Relative Working for DOT
_____ 9. Friend or Relative Not Working for DOT
_____ 10. DOT's Careers in Motion Web Site (www.careers.dot.gov)
_____ 11. Internet or Other Web Site
_____ 12. State Vocational Rehabilitation Agency or U.S. Dept. of Veterans' Affairs
_____ 13. Other (specify _____)

OST Form ???

[FR Doc. E9–13823 Filed 6–11–09; 8:45 am]
BILLING CODE 4910–9X–C

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2009–0150]

Medical Review Board Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Medical Review Board (MRB) public meeting.

SUMMARY: FMCSA announces a public meeting of the Agency's MRB. The MRB public meeting will provide the public an opportunity to observe MRB deliberations about FMCSA's medical standards, and provide comments to the MRB in accordance with the Federal Advisory Committee Act (FACA).

DATES: The MRB meeting will be held from 9 a.m.–4:20 p.m. on Wednesday, July 1, 2009. Please refer to the preliminary agenda for this meeting in the **SUPPLEMENTARY INFORMATION** section of this notice for specific information.

ADDRESSES: The meeting will take place at the United States Department of Transportation, West Building Ground Floor, Conference Room 8, 9, 10, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0150 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.).

You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Information on Services for Individuals with Disabilities:

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jennifer Musick at 703–998–0189 ext. 237.

SUPPLEMENTARY INFORMATION: The preliminary agenda for the meeting includes: *

0900–0905 Call to Order, Introduction and Agenda Review.
0905–0935 Psychiatric Disorders and CMV Driver Safety Evidence Report Presentation.
0935–1005 Psychiatric Disorders and CMV Driver Safety Medical Expert Panel Presentation Public Comment on ICDs and CRT: Implications for Driving a CMV.
1005–1020 Public Comment on Psychiatric Disorders and CMV Driver Safety.
1020–1120 MRB Deliberation on Psychiatric Disorders and CMV Driver Safety.
1120–1150 Circadian Rhythm Disorders, Parasomnias, Sleep-Related Movement Disorders, Hypersomnias of Central Origin and CMV Driver Safety Evidence Report Presentation.**
1150–1205 Public Comment on Circadian Rhythm Disorders, Parasomnias, Sleep-Related Movement Disorders, Hypersomnias of Central Origin and CMV Driver Safety.
1205–1305 Lunch (on your own). ***
1305–1335 MRB Deliberations on Circadian Rhythm Disorders, Parasomnias, Sleep-Related Movement Disorders, Hypersomnias of Central Origin and CMV Driver Safety Evidence Report Presentation.
1335–1405 Musculoskeletal Disorders II, Spinal Cord Injury and CMV Driver Safety Evidence Report Presentation.
1405–1420 Public Comment on Musculoskeletal Disorders II, Spinal Cord Injury and CMV Driver Safety.
1420–1450 MRB Deliberations on Musculoskeletal Disorders II, Spinal Cord Injury and CMV Driver Safety.
1450–1520 Implantable Cardioverter Defibrillators (ICDs) and Cardiac Resynchronization Therapy (CRT): Implications for Driving a CMV Evidence Report Presentation.
1520–1535 Public Comment on ICDs and CRT: Implications for Driving a CMV.
1535–1605 MRB Deliberations on ICDs and CRT: Implications for Driving a CMV.
1605–1620 Other Business.
1620 Call to Adjourn.

* Agenda is subject to change.

** This topic does not include sleep apnea which was previously addressed by the MRB in January 2008.

*** Breaks will be announced on meeting day and may be adjusted according to schedule changes, other meeting requirements.

Background

The U.S. Secretary of Transportation announced on March 7, 2006, the five medical experts who serve on FMCSA's Medical Review Board (MRB). Section 4116 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub. L. 109–59) requires the Secretary of Transportation with the advice of the MRB to ''establish, review, and revise medical standards for operators of Commercial Motor Vehicles (CMVs) that will ensure that the physical condition of operators is adequate to enable them to operate the vehicles safely.'' FMCSA is planning updates to the physical qualification regulations of CMV drivers, and the MRB will provide the necessary science-based guidance to establish realistic and responsible medical standards.

The MRB operates in accordance with the Federal Advisory Committee Act (FACA) as announced in the **Federal**

Register (70 FR 57642, October 3, 2005). The MRB is charged initially with the review of all current FMCSA medical standards (49 CFR 391.41), as well as making recommendations for new science-based standards and guidelines to ensure that drivers operating CMVs in interstate commerce, as defined in CFR 390.5, are physically capable of doing so.

Meeting Participation

Attendance is open to the interested public, including medical examiners, motor carriers, drivers, and representatives of medical and scientific associations. Written comments for this MRB meeting will also be accepted beginning on June 12, 2009 and continuing until July 15, 2009, and should include the docket ID that is listed in the **ADDRESSES** section.

During the MRB meeting, oral comments may be limited depending on how many persons wish to comment; and will be accepted on a first come, first serve basis as requestors register at the meeting. The comments must directly address relevant medical and scientific issues on the MRB meeting agenda. For more information, please view the following Web site: *http://www.fmcsa.dot.gov/mrb.*

Issued on: June 5, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–13785 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Fifth Meeting, Special Committee 213/EUROCAE: Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS), EUROCAE Working Group 79 (WG–79)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 213/EUROCAE, Enhanced Flight Vision Systems/Synthetic Vision Systems (EFVS/SVS), EUROCAE Working Group 79 (WG–79).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 213, Standards for Air Traffic Data Communication Services.

DATES: The meeting will be held July 14–16, 2009 from 9 a.m.–5 p.m. Sign-in will begin at 8:30 a.m., July 14, 2009.

ADDRESSES: The meeting will be held at MITRE Center for Advanced Aviation System Development (CAASD), 7515 Colshire Drive, McLean, Virginia, USA 22102–7508, POC Tel: David A. Domino, 703–983–3695, *http://www.mitrecaasd.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 213 meeting. The agenda will include:

July 14

- Opening Plenary (Welcome, Introductions, Review agenda and objectives).
- Plenary briefings.
- Plenary work group updates, action item review, LED lighting.
- Separate work group 1 and work group 2 discussions.

July 15

- Separate work group 1 and 2 discussions.
- Plenary discussion.

July 16

- Separate work group 1 and 2 discussions.
- Summarize work group discussions.
- Review action items.
- Closing Plenary (Administrative).

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

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

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–13876 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID: FMCSA–2009–0086]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 22 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective June 12, 2009. The exemptions expire on June 13, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketsinfo.dot.gov.*

Background

On April 28, 2009, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (74 FR 19267). That notice listed 22 applicants' case histories. The 22 individuals applied for exemptions from

the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 22 applications on their merits and made a determination to grant exemptions to all of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 22 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, prosthesis, optic neuropathy, corneal scar, and loss of vision due to trauma. In most cases, their eye conditions were not recently developed. All but 10 of the applicants were either born with their vision impairments or have had them since childhood. The 10 individuals who sustained their vision conditions as adults have had them for periods ranging from 7 to 56 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State.

While possessing a valid CDL or non-CDL, these 22 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 60 years. In the past 3 years, three of the drivers had convictions for traffic violations and one of the drivers was involved in a crash.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the April 28, 2009 notice (74 FR 19267).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at docket number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 22 applicants, three of the applicants had traffic violations for speeding and one of the applicants was involved in a crash. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history

provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways.

Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 22 applicants listed in the notice of April 28, 2009 (74 FR 19267).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 22 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 22 exemption applications, FMCSA exempts, Michael D. Abel, Andre G. Burns, Paul M. Christina, Harold H. Cunning, Kenneth W. Dunn, Thomas F. Ethier, Johnny K. Hiatt, Richard S. Hoffman, Perry D. Jensen, Caleb T. Kass, Craig R. Martin, Bruce McCabe, Jeffrey M. Mueller, George M. Nelson, Robert D. Porter, Joseph E. Pfaff, Cecil R. Rhodes, William A. Rister, Billy D. Robertson, Jerry G. Sexton, Christopher A. Weidner, and Paul A. Wolfe from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on June 5, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–13829 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2009–0115]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt twenty-seven individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective June 12, 2009. The exemptions expire on June 12, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://Docketinfo.dot.gov.*

Background

On April 28, 2009, FMCSA published a notice of receipt of Federal diabetes exemption applications from twenty-seven individuals, and requested comments from the public (74 FR 19271). The public comment period closed on May 28, 2009 and no comments were received.

FMCSA has evaluated the eligibility of the twenty-seven applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of

crash involvement than the general population. The diabetes rule provides that ''A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control'' (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled ''A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century.'' The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The 2003 notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These twenty-seven applicants have had ITDM over a range of 1 to 36 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the April 28, 2009, **Federal Register** Notice (74 FR 19275). Therefore, they will not be repeated in this notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not they are related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

After considering the comments to the docket, and based upon its evaluation of the twenty-seven exemption applications, FMCSA exempts, Carroll F. Aardema, Edward F. Back, III, Aaron Bailey, Mirsad Beganovic, Carol J. Brummel, Paul R. Caudill, Bernia G. Denegar, Felipe Guerra, Jr., Michael K. Gunn, Steven D. Hancock, George E. Hardman, David L. Hottell, Marlin K. Johnson, Joshua L. Kroetch, Thomas E. Kusinsky, David S. Maynard, Gareth L. Miller, Joseph C. Minnier, Brian K. Moore, Zachary T. Patton, Edward R. Peters, Terry L. Robinett, Mark E. Strunk, Scot J. Suhr, Michael R. Sullivan, Kenneth R. Walker, and Blake A. Woolman from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under ''Conditions and Requirements'' above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: June 5, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–13832 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2009–0155]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions from the diabetes standard; request for comments.

SUMMARY: FMCSA announces receipt of applications from 21 individuals for exemptions from the prohibition against persons with insulin-treated diabetes mellitus (ITDM) operating commercial motor vehicles (CMVs) in interstate commerce. If granted, the exemptions would enable these individuals with ITDM to operate commercial motor vehicles in interstate commerce.

DATES: Comments must be received on or before July 13, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2009–0122 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

• *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://Docketinfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statutes also allow the Agency to renew exemptions at the end of the 2-year period. The 21 individuals listed in this notice have recently requested an exemption from the diabetes prohibition in 49 CFR 391.41(b)(3), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by the statutes.

Qualifications of Applicants

Eugene L. Bradley

Mr. Bradley, age 59, has had ITDM since 1995. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Bradley meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

John F. Carruthers

Mr. Carruthers, 55, has had ITDM since 2002. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Carruthers meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Pennsylvania.

Keith A. Craven

Mr. Craven, 50, has had ITDM since 1999. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Craven meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from North Carolina.

Jose E. Cruz

Mr. Cruz, 55, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Cruz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class B CDL from Indiana.

Daniel L. Dixon

Mr. Dixon, 48, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Dixon meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Indiana.

Michael A. Garufi

Mr. Garufi, 55, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Garufi meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from Pennsylvania.

Joseph P. Jurewicz II

Mr. Jurewicz, 33, has had ITDM since 1999. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Jurewicz meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class B CDL from Connecticut.

Dana N. Larsen

Mr. Larsen, 39, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Larsen meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Jason G. Leavitt

Mr. Leavitt, 39, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Leavitt meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Utah.

Chad M. Morris

Mr. Morris, 32, has had ITDM since 1985. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Morris meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class D operator's license from New York.

Thomas M. Petee

Mr. Petee, 58, has had ITDM since 2003. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Petee meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from Michigan.

Jim A. Phelps

Mr. Phelps, 56, has had ITDM since 1994. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Phelps meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

Larry R. Price

Mr. Price, 66, has had ITDM since 2009. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Price meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Ohio.

James F. Rabideau, Jr.

Mr. Rabideau, 32, has had ITDM since 2007. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Rabideau meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2008 and certified that he does not have diabetic retinopathy. He holds a Class C operator's license from New York.

Stanley N. Reneau

Mr. Reneau, 38, has had ITDM since 1977. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Reneau meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from New Mexico.

Richard D. Ritenour

Mr. Ritenour, 52, has had ITDM since 2007. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Ritenour meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy.

He holds a Class B CDL from Pennsylvania.

John E. Spano

Mr. Spano, 52, has had ITDM since 2008. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Spano meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Massachusetts.

Delton N. Stewart

Mr. Stewart, 49, has had ITDM since 2008. His endocrinologist examined him in 2008 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Stewart meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he has stable nonproliferative diabetic retinopathy. He holds a Class A CDL from North Carolina.

Mark S. Sundberg

Mr. Sundberg, 51, has had ITDM since 1966. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Sundberg meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His ophthalmologist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds an operator's license from Michigan.

Timothy G. Walls

Mr. Walls, 45, has had ITDM since 1998. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Walls meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class D operator's license from West Virginia.

Kelly R. Winslow

Mr. Winslow, 49, has had ITDM since 1995. His endocrinologist examined him in 2009 and certified that he has had no hypoglycemic reactions resulting in loss of consciousness, requiring the assistance of another person, or resulting in impaired cognitive function that occurred without warning in the past 5 years; understands diabetes management and monitoring; and has stable control of his diabetes using insulin, and is able to drive a CMV safely. Mr. Winslow meets the requirements of the vision standard at 49 CFR 391.41(b)(10). His optometrist examined him in 2009 and certified that he does not have diabetic retinopathy. He holds a Class A CDL from Idaho.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated in the date section of the Notice.

FMCSA notes that Section 4129 of the Safe, Accountable, Flexible and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) requires the Secretary to revise its diabetes exemption program established on September 3, 2003 (68 FR 52441).[1] The revision must provide for individual assessment of drivers with diabetes mellitus, and be consistent with the criteria described in section 4018 of the Transportation Equity Act for the 21st Century (49 U.S.C. 31305).

Section 4129 requires: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the September 3, 2003 Notice. FMCSA discontinued use of the 3-year driving experience and fulfilled the requirements of section 4129 while continuing to ensure that operation of CMVs by drivers with ITDM will achieve the requisite level of safety required of all exemptions granted under 49 U.S.C. 31136(e).

Section 4129(d) also directed FMCSA to ensure that drivers of CMVs with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary.

FMCSA concluded that all of the operating, monitoring and medical requirements set out in the September 3, 2003 Notice, except as modified, were in compliance with section 4129(d). Therefore, all of the requirements set out in the September 3, 2003 Notice, except as modified by the Notice in the **Federal Register** on November 8, 2005 (70 FR 67777), remain in effect.

Issued on: June 5, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–13833 Filed 6–11–09; 8:45 am]

BILLING CODE P

[1] Section 4129(a) refers to the 2003 Notice as a ''final rule.'' However, the 2003 Notice did not issue a ''final rule'' but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–7165; FMCSA–2000–7918; FMCSA–2000–8398; FMCSA–2002–12294; FMCSA–2002–13411; FMCSA–2004–17984; FMCSA–2004–19477; FMCSA–2005–20027; FMCSA–2005–20560; FMCSA–2007–27333]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety

Regulations for 24 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on May 28, 2009.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 24 renewal applications, FMCSA renews the Federal vision exemptions for Carl W. Adams, Charles C. Chapman, Jeffrey W. Cotner, Everett A. Doty, John K. Fank, Bobby G. Fletcher, Heather M.B. Gordon, Randolph D. Hall, Raymond G. Hayden, Robert E. Hendrick, Gene A. Lesher, Jr., Wallace F. Mahan, Sr., Anthony R. Miles, Kenneth L. Nau, David W. Peterson, Randel G. Pierce, Steven A. Proctor, Frederick G. Robbins, Manuel H. Sanchez, Jose C. Sanchez-Sanchez, David M. Stout, Kenneth E. Suter, Jr., Thaddeus E. Temoney, and Daniel R. Viscaya.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: June 5, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–13786 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0053]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TRIBUTE II.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0053 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before July 13, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0053. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TRIBUTE II is:

Intended Use: ''1 hour trips in Santa Monica Bay, off Los Angeles county, for family witnessed scatterings of cremains.''

Geographic Region: ''California.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: May 28, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–13824 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0057]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel PINTA IV.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0057 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 13, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0057. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PINTA IV is:

Intended Use: ''Charter boat.''

Geographic Region: ''Wisconsin.''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: May 28, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–13825 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2009 0054]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel FALCON 2000.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD–2009–0054 at *http://www.regulations.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before July 13, 2009.

ADDRESSES: Comments should refer to docket number MARAD–2009–0054. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21–203, Washington, DC 20590. Telephone 202–366–5979.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel FALCON 2000 is:

Intended Use: ''charter.''

Geographic Region: ''Rhode Island (also CT, MA).''

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Dated: May 28, 2009.

By Order of the Maritime Administrator.

Christine Gurland,

Acting Secretary, Maritime Administration.

[FR Doc. E9–13827 Filed 6–11–09; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, ''International Regulation—Part 28.'' The OCC also gives notice that it has sent the information collection to the Office of Management and Budget (OMB) for review.

DATES: Comments must be received by July 13, 2009.

ADDRESSES: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0102, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.

Additionally, you should send a copy of your comments to OCC Desk Officer, 1557–0102, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Mary H. Gottlieb, OCC Clearance Officer, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: International Regulation—Part 28.

OMB Control No.: 1557–0102.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

12 CFR Part 28 contains the following collections of information:

12 CFR 28.3 Filing Requirements for Foreign Operations of a National Bank—Notice Requirement

A national bank shall notify the OCC when it:

- Files an application, notice, or report with the FRB to establish or open a foreign branch, or acquire or divest of an interest in, or close, an Edge corporation, Agreement corporation, foreign bank, or other foreign organization.
- Opens a foreign branch, and no application or notice is required by the FRB for such transaction.

In practice, the OCC has also required an application pursuant to § 28.3(c) from a national bank to join a foreign exchange, clearinghouse, or similar type of organization. In lieu of a notice, the OCC may accept a copy of an application, notice, or report submitted to another Federal agency that covers the proposed action and contains substantially the same information required by the OCC. A national bank shall furnish the OCC with any additional information the OCC may require in connection with the national bank's foreign operations.

12 CFR 28.12(a) Covered Under OMB Control No. 1557–0014 (Comptroller's Licensing Manual) Approval of a Federal Branch or Agency—Approval and Licensing Requirements

A foreign bank shall submit an application to, and obtain prior approval from the OCC before it establishes a Federal branch or agency, or exercises fiduciary powers at a Federal branch.

12 CFR 28.12(e)(2) Covered Under OMB Control No. 1557–0014 (Comptroller's Licensing Manual) Approval of a Federal Branch or Agency—Written Notice for Additional Intrastate Branches or Agencies

A foreign bank shall provide written notice to the OCC 30 days in advance of the establishment of an intrastate branch or agency.

12 CFR 28.12(h) Covered Under OMB Control No. 1557–0014 (Comptroller's Licensing Manual) Approval of a Federal Branch or Agency—After-the-Fact Notice for Eligible Foreign Banks

A foreign bank proposing to establish a Federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an existing bank subsidiary, branch, or agency, may proceed with the transaction and provide after-the-fact notice within 14 days of the transaction to the OCC if (1) the resulting bank is an ''eligible foreign bank'' within the meaning of § 28.12(f) and (2) no Federal branch established by the transaction accepts deposits insured by the FDIC.

12 CFR 28.12(i) Covered Under OMB Control No. 1557–0014 (Comptroller's Licensing Manual) Approval of a Federal Branch or Agency—Contraction of Operations

A foreign bank shall provide written notice to the OCC within 10 days after converting a Federal branch into a limited Federal branch or Federal agency.

12 CFR 28.14(c) Limitations Based Upon Capital of a Foreign Bank—Aggregation

A foreign bank shall aggregate business transacted by all Federal branches and agencies with the business transacted by all State branches and agencies controlled by the foreign bank in determining its compliance with limitations based upon the capital of the foreign bank. A foreign bank shall designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance.

12 CFR 28.15(d), (d)(1), (d)(2), and (f) Capital Equivalency Deposits

Deposit arrangements:

- A foreign bank should require its depository bank to segregate its capital equivalency deposits on the depository bank's books and records.
- The instruments making up the capital equivalency deposit that are placed in safekeeping at a depository bank to satisfy a foreign bank's capital equivalency deposit requirement must

be maintained pursuant to an agreement prescribed by the OCC that shall be a written agreement entered into with the OCC.

• Each Federal branch or agency shall maintain a capital equivalency account and keep records of the amount of liabilities requiring capital equivalency coverage in a manner and form prescribed by the OCC.

• A foreign bank's capital equivalency deposits may not be reduced in value below the minimum required for that branch or agency without the prior approval of the OCC, but in no event below the statutory minimum.

12 CFR 28.16(c) Deposit-Taking by an Uninsured Federal Branch—Application for an Exemption

A foreign bank may apply to the OCC for an exemption to permit an uninsured Federal branch to accept or maintain deposit accounts that are not listed in paragraph (b) of this section. The request should describe:

• The types, sources, and estimated amount of such deposits and explain why the OCC should grant an exemption;

• How the exemption maintains and furthers the policies described in paragraph (a) of this section.

12 CFR 28.16(d) Deposit-Taking by an Uninsured Federal Branch—Aggregation of Deposits

A foreign bank that has more than one Federal branch in the same State may aggregate deposits in all of its Federal branches in that State, but exclude deposits of other branches, agencies or wholly owned subsidiaries of the bank. The Federal branch shall compute the average amount by using the sum of deposits as of the close of business of the last 30 calendar days ending with and including the last day of the calendar quarter, divided by 30. The Federal branch shall maintain records of the calculation until its next examination by the OCC.

12 CFR 28.17 Covered Under OMB Control No. 1557–0014 (Comptroller's Licensing Manual) Notice of Change in Activity or Operations

A Federal branch or agency shall notify the OCC if it changes its corporate title; changes its mailing address; converts to a State branch, State agency, or representative office; or the parent foreign bank changes the designation of its home State.

12 CFR 28.18(c)(1) Recordkeeping and Reporting—Maintenance of Accounts, Books, and Records

Each Federal branch or agency shall maintain a set of accounts and records reflecting its transactions that are separate from those of the foreign bank and any other branch or agency. The Federal branch or agency shall keep a set of accounts and records in English sufficient to permit the OCC to examine the condition of the Federal branch or agency and its compliance with applicable laws and regulations.

12 CFR 28.20(a)(1) Maintenance of Assets—General Rule

The OCC may require a foreign bank to hold certain assets in the State in which its Federal branch or agency is located.

12 CFR 28.22(b) Covered Under OMB Control No. 1557–0014 (Comptroller's Licensing Manual) Voluntary Liquidation Notice to Customers and Creditors

A foreign bank shall publish notice of the impending closure of each Federal branch or agency for a period of two months in every issue of a local newspaper where the Federal branch or agency is located. If only weekly publication is available, the notice must be published for nine consecutive weeks.

12 CFR 28.22(e) Reports of Examination

The Federal branch or agency shall send the OCC certification that all of its Reports of Examination have been destroyed or return its Reports of Examination to the OCC.

12 CFR 28.25(a) Covered Under OMB Control No. 1557–0014 (Comptroller's Licensing Manual) Change in Control—After-the-Fact Notice

In cases where no other filing is required, a foreign bank that operates a Federal branch or agency shall inform the OCC in writing of the direct or indirect acquisition of control of the foreign bank by any person or entity, or group of persons or entities acting in concert, within 14 calendar days after the foreign bank becomes aware of a change in control.

12 CFR 28.52 Covered Under OMB Control No. 1557–0081 (MA)—Reports of Condition and Income (Interagency Call Report), FFIEC 031, FFIEC 041 Allocated Transfer Risk Reserve

A banking institution shall establish an allocated transfer risk reserve for specified international assets when required by the OCC in accordance with the requirements of the section.

12 CFR 28.54 Covered Under OMB Control No. 1557–0100 Country Exposure Report and Country Exposure Information Report (FFIEC 009, FFIEC 009a) Reporting and Disclosure of International Assets

A banking institution shall submit to the OCC, at least quarterly, information regarding the amounts and composition of its holdings of international assets. A banking institution shall submit to the OCC information regarding concentrations in its holdings of international assets that are material in relation to total assets and to capital of the institution.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals; businesses or other for-profit.

Estimated Number of Respondents: 79.

Estimated Total Annual Responses: 117.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 3,661.5.

The OCC issued a 60-day notice for comment on April 3, 2009. 71 FR 15322. No comments were received. The OCC invites continued comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 8, 2009.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. E9–13873 Filed 6–11–09; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of an open meeting.

SUMMARY: This document contains corrections to a notice of an open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee, that was published in the **Federal Register** on Tuesday, June 2, 2009 (74 FR 26483). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez, 1–888–912–1227, or 954–423–7979 (not a toll free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of an open meeting that is the subject of this correction is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988).

Need for Correction

As published, the notice of an open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of an open meeting of the Taxpayer Advocacy Panel Notice Improvement Issue Committee, that was the subject of FR Doc. E9–12764, is corrected as follows:

On Page 36483, column 2, under the caption **SUPPLEMENTARY INFORMATION**, line 9, the language ''and Friday 8 a.m. to 3 p.m. Central Time'' is corrected to read ''and Friday 8 a.m. to 3 p.m. Eastern Time.''

LaNita VanDyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. E9–13797 Filed 6–11–09; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Announcement of the Fall 2009 Annual Grant Competition Effective October 1, 2009

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its Annual Grant Competition, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution. The Annual Grant Competition is open to any project that falls within the Institute's broad mandate of international conflict resolution.

Deadline: October 1, 2009.

NEW Online application available: *http://www.usip.org/grants/*.

DATES: Submission of Application: October 1, 2009. Notification Date: March 31, 2010.

ADDRESSES: United States Institute of Peace, Grant Program, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 833–1018 (fax), (202) 457–1719 (TTY), E-mail: *grants@usip.org.*

FOR FURTHER INFORMATION CONTACT: The Grant Program—Annual Grant Competition, Phone (202)-429–3842, E-mail: *grants@usip.org.*

Dated: June 8, 2009.

Michael Graham,

Vice President for Management.

[FR Doc. E9–13717 Filed 6–11–09; 8:45 am]

BILLING CODE 6820–AR–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the Priority Grant Competition; Effective Immediately

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its ongoing Priority Grant Competition. The Priority Grant Competition focuses on seven countries as they relate to USIP's mandate. The Priority Grant Competition is restricted to projects that fit specific themes or topics identified for each country.

The seven Priority Grant Competition countries are outlined below. The specific themes and topics for each country may be found at our Web site at: *http://www.usip.org/grants/priority_grantmaking.html.*

- Afghanistan.
- Colombia.
- Iran.
- Iraq.
- Nigeria.
- Pakistan.
- Sudan.

Deadline: The Priority Grant Competition applications are accepted throughout the year and awards are announced throughout the year. Please visit our Web site at: *http://www.usip.org/grants/priority_grantmaking.html* for specific information on the competition as well as instructions about how to apply.

ADDRESSES: If you are unable to access our Web site, you may submit an inquiry to: United States Institute of Peace, Grant Program, Priority Grant Competition, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011; (202) 429–3842 (phone), (202) 833–1018 (fax), (202) 457–1719 (TTY), E-mail: *grants@usip.org.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202) 429–3842, E-mail: *grants@usip.org.*

Dated: June 8, 2009.

Michael Graham,

Vice President for Management.

[FR Doc. E9–13719 Filed 6–11–09; 8:45 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (21–0847)]

Proposed Information Collection (Authorization To Substitute a Claim of a Deceased Claimant) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to allow a beneficiary to request to be substituted for a claimant who passed away prior to completion of his or her claim for benefits.

DATES: Written comments and recommendations on the proposed

collection of information should be received on or before August 11, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–New (21–0847)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Authorization to Substitute a Claim of a Deceased Claimant, VA Form 21–0847.

OMB Control Number: 2900–New (21–0847).

Type of Review: New collection.

Abstract: VA Form 21–0847 will be used to allow beneficiaries to request authorization to be substituted for a claimant, who passed away, while a claim or appeal for benefits is pending. The substituted beneficiary must file a claim no later than one year after the claimant's date of the death to be eligible to receive accrued benefits due to the deceased claimant.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,667.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 20,000.

Dated: June 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–13779 Filed 6–11–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (VR&E Outcome)]

Proposed Information Collection (VR&E Program National Outcome Follow-up With Employment Based Rehabilitated Veterans Survey) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine claimants' satisfaction with their Vocational Rehabilitation and Employment Program experience.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 11, 2009.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–New (VR&E Outcome)'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Vocational Rehabilitation and Employment (VR&E) Program National Outcome Follow-up with Employment Based Rehabilitated Veterans Survey.

OMB Control Number: 2900–New (VR&E Outcome).

Type of Review: New collection.

Abstract: The VR&E program provides services and assistance to enable Veterans with service-connected disability to achieve employment-based rehabilitated status. VA will use the National Outcome Follow-up with Employment Based Rehabilitated Veterans survey to follow up with Veterans who were declared ''Rehabilitated'' by entering suitable employment after completing a VR&E vocational training program. The data collected will assist VA in analyzing the outcome of VR&E services provided to Veterans who achieved employment-based rehabilitated status.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,000.

Estimated Average Burden per Respondent: 7.5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 8,000.

Dated: June 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–13780 Filed 6–11–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0682]

Agency Information Collection Activities (Advertising, Sales, and Enrollment Materials, and Candidate Handbooks) Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 13, 2009.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0682'' in any correspondence.

For Further Information or a Copy of the Submission Contact: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0682.''

SUPPLEMENTARY INFORMATION:

Title: Advertising, Sales, and Enrollment Materials, and Candidate Handbooks, 38 CFR 21.4252(h).

OMB Control Number: 2900–0682.

Type of Review: Extension of a currently approved collection.

Abstract: VA approved educational institutions offering courses approved for the enrollment of Veterans, or eligible persons, and organizations or entities offering licensing or certification tests approved for payment of educational assistance as reimbursement to Veterans or eligible persons who took such tests, must maintain a complete record of all advertising, sales materials, enrollment materials, or candidate handbooks that educational institutions or its agents used during the preceding 12-month period. The materials are examined by VA and State Approving Agency employees to ensure that educational institutions or its agents are following VA approval guidelines.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 30, 2009, at pages 14192–14193.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,498.

Dated: June 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–13781 Filed 6–11–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0671]

Agency Information Collection (Traumatic Injury Protection (TSGLI)) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 13, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0671'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0671.''

SUPPLEMENTARY INFORMATION:

Title: Traumatic Injury Protection (TSGLI).

OMB Control Number: 2900–0671.

Type of Review: Extension of a currently approved collection.

Abstract: Service members who experienced a traumatic injury such as loss of limbs on or after October 7, 2001 through November 30, 2005 are eligible to receive Traumatic Injury Protection benefits if the loss was incurred during Operation Enduring Freedom or Operation Iraqi Freedom. TSGLI provides severely injured service members and the member's family with monetary assistance through an often long and difficult rehabilitation period. The service members must be insured under the Servicemembers' Group Life Insurance to be eligible for TSGLI. The service member, the attending physician, the branch of service must complete Prudential Form GL.2005.261, Certification of Traumatic Injury Protection in order for the service member to receive such benefits. VA uses the data collected to determine the member's eligibility for TSGLI benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 30, 2009, at page 14192.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,500.

Dated: June 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–13782 Filed 6–11–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0673]

Agency Information Collection (One-VA Identification Verification Card) Activities Under OMB Review

AGENCY: Office of Operations, Security, and Preparedness, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that The Office of Operations, Security, and Preparedness, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before July 13, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0673'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0673.''

SUPPLEMENTARY INFORMATION:

Title: Request for One-VA Identification Card, VA Form 0711.

OMB Control Number: 2900–0673.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 0711 is used to collect pertinent information from employees, applicants seeking employment with VA, contractors, and affiliates prior to issuing a Department identification credential. VA uses the data collected to personalize, print, and issue a personal identify verification card.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on March 30, 2009, at pages 14191–14192.

Affected Public: Federal government, individuals or households, and business or other for-profits.

Estimated Annual Burden: 8,333 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 100,000.

Dated: June 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–13783 Filed 6–11–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0564]

Agency Information Collection (Direct Deposit Enrollment) Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before July 13, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0564'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0564.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Direct Deposit Enrollment, VA Form 24–0296.

b. Direct Deposit Enrollment (Australia), VA Form 24–0296a.

c. Direct Deposit Enrollment (Canada), VA Form 24–0596b.

d. Direct Deposit Enrollment (Germany), VA Form 24–2096c.

e. Direct Deposit Enrollment (Ireland), VA Form 24–0296d.

f. Direct Deposit Enrollment (United Kingdom), VA Form 24–0296e.

OMB Control Number: 2900–0564.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants who wish to have their benefit payments electronically deposited into their financial institution account must complete the appropriate direct deposit enrollment form to enroll the electronic funds transfer program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 30, 2009, at pages 14190–14191.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 24–0296—750 hours.

b. VA Form 24–0296a (Australia)—100 hours.

c. VA Form 24–2096b (Canada)—100 hours.

d. VA Form 24–2096c (Germany)—100 hours.

e. VA Form 24–2096d (Ireland)—100 hours.

f. VA Form 24–2096e (United Kingdom)—100 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 24–0296—3,000.

b. VA Form 24–0296a (Australia)—400.

c. VA Form 24–2096b (Canada)—400.

d. VA Form 24–2096c (Germany)—400.

e. VA Form 24–0296d (Ireland)—400.

f. VA Form 24–0296e (United Kingdom)—400.

Dated: June 8, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–13784 Filed 6–11–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on July 7–8, 2009, in the Chandelier Room at the St. Regis Washington DC, 923 16th and K Streets, NW., from 8:30 a.m. to 5 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule and give advice on the most appropriate means of responding to the needs of veterans relating to disability compensation.

On July 7, the Committee will receive briefings about studies on compensation for Veterans with service-connected disabilities and other Veteran benefits programs. On July 8, the Committee will break into subcommittees to prepare draft recommendations which will be subsequently considered by the full Committee. In the afternoon of July 8, time will be allocated for receiving public comments. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Ms. Ersie Farber, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (211A), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Farber at (202) 461–9728 or *Ersie.farber@va.gov*.

Dated: June 9, 2009.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–13927 Filed 6–11–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,

June 12, 2009

Part II

Nuclear Regulatory Commission

10 CFR Parts 50 and 52

Consideration of Aircraft Impacts for New Nuclear Power Reactors; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 52

RIN 3150–AI19

[NRC–2007–0009]

Consideration of Aircraft Impacts for New Nuclear Power Reactors

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is amending its regulations to require applicants for new nuclear power reactors to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft. The applicant is required to use realistic analyses to identify and incorporate design features and functional capabilities to show, with reduced use of operator actions, that either the reactor core remains cooled or the containment remains intact, and either spent fuel cooling or spent fuel pool integrity is maintained. These requirements apply to applicants for new construction permits; new operating licenses that reference a new construction permit; new standard design certifications; renewal of any of the four existing design certifications if the design has not previously been amended to comply with the rule; new standard design approvals; manufacturing licenses that don't reference a standard design certification or standard design approval, or that reference a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule; and combined licenses that don't reference a standard design certification, standard design approval, or manufactured reactor, or that reference a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule. In addition, these amendments contain requirements for control of changes to any design features or functional capabilities credited to show that the facility can withstand the effects of an aircraft impact.

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

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID [NRC–2007–0009]. Address questions about NRC dockets to Ms. Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

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

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

DATES: The effective date is July 13, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. Stewart Schneider, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–4123; e-mail: *Stewart.Schneider@nrc.gov* or Ms. Nanette Gilles, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–1180; e-mail: *Nanette.Gilles@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Currently Operating Power Reactors
III. Currently Approved Standard Design Certifications and Combined Licenses Referencing These Certifications
IV. Renewal of an Operating License, Standard Design Certification, Combined License, or Manufacturing License
V. New Nuclear Power Reactors
A. Introduction
B. Description of Beyond-Design-Basis Aircraft Impact
C. Aircraft Impact Assessment
VI. Responses to Public Comments
A. Overview of Public Comments
B. Responses to Specific Requests for Comments
C. Responses to Remaining Comments
VII. Section-by-Section Analysis
VIII. Guidance
IX. Availability of Documents
X. Agreement State Compatibility
XI. Voluntary Consensus Standards
XII. Finding of No Significant Environmental Impact: Availability
XIII. Paperwork Reduction Act Statement
XIV. Regulatory Analysis
XV. Regulatory Flexibility Act Certification
XVI. Backfit Analysis
XVII. Congressional Review Act

I. Introduction

The Commission believes that it is prudent for nuclear power plant designers to take into account the potential effects of the impact of a large, commercial aircraft. The Commission has determined that the impact of a large, commercial aircraft is a beyond-design-basis event, and the NRC's requirements that apply to the design, construction, testing, operation, and maintenance of design features and functional capabilities for design basis events will not apply to design features or functional capabilities selected by the applicant solely to meet the requirements of this final rule (aircraft impact rule). The NRC's approach to aircraft impacts is consistent with its previous approach to beyond-design-basis events. The objective of this rule is to require nuclear power plant [1] designers to perform a rigorous assessment of the design to identify design features and functional capabilities that could provide additional inherent protection to withstand the effects of an aircraft impact (*i.e.,* meet the rule's acceptance criteria). This rule should result in new nuclear power reactor facilities being more inherently robust with regard to an aircraft impact than if they were designed in the absence of this final rule. This final rule provides an enhanced level of protection beyond that which is provided by the existing adequate protection requirements, which all operating power reactors are required to meet.

The final rule requirement to perform a design-specific assessment to identify design features and functional capabilities applies to applicants for new construction permits; new operating licenses that reference a new construction permit; new standard design certifications; renewal of any of the four existing design certifications if the design has not previously been amended to comply with the final rule; new standard design approvals; manufacturing licenses that don't reference a standard design certification

[1] The requirements of the final aircraft impact rule may apply, in some contexts, to the designer who is responsible for, or seeks certification or regulatory approval of something less than a complete nuclear power plant (*e.g.,* a nuclear reactor without site-specific elements such as the ultimate heat sink). For ease of discussion in the remainder of this **SUPPLEMENTARY INFORMATION**, reference to a ''nuclear power plant designer'' or ''facility designer'' is meant to include, in the appropriate context, a designer of something less than a complete nuclear power plant, but is at least as encompassing as a ''nuclear reactor.'' Similarly, a reference to the design of a ''facility'' also encompasses, in the appropriate context, the design of something less than a complete nuclear power plant (*e.g.,* the design of a reactor).

or standard design approval, or that reference a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule; and combined licenses that don't reference a standard design certification, standard design approval, or manufactured reactor, or that reference a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule. All of these applicants as a whole are referred to as ''applicants for new nuclear power reactors'' throughout the remainder of the **SUPPLEMENTARY INFORMATION** for this final rule. These applicants are required to perform an assessment of the effects on the designed facility of the impact of a large, commercial aircraft. Using realistic analyses, applicants must identify and incorporate into the design those design features and functional capabilities to show, with reduced use of operator action, that the reactor core remains cooled or the containment remains intact and spent fuel cooling or spent fuel pool integrity is maintained (herein after referred to as the acceptance criteria). Applicants are required to describe how such design features and functional capabilities meet the acceptance criteria of the rule. Applicants and licensees are subject to requirements for the control of changes to the design features and functional capabilities identified as a result of complying with this final rule.

The Commission-approved design basis threat (DBT) does not include an aircraft attack. The NRC published its final DBT rule in the **Federal Register** on March 19, 2007 (72 FR 12705) (Title 10, § 73.1, ''Purpose and scope,'' of the *Code of Federal Regulations* (10 CFR 73.1)). Two well-established bases support the exclusion of aircraft attacks from the DBT. First, it is not reasonable to expect a licensee with a private security force using weapons legally available to it to be able to defend against such an attack. Second, such an act is in the nature of an attack by an enemy of the United States (U.S.). Power reactor licensees are not required to design their facilities or otherwise provide measures to defend against such an attack, as provided by 10 CFR 50.13, ''Attacks and destructive acts by enemies of the United States; and defense activities.''

The Commission has addressed aircraft attacks by regulatory means other than the DBT rule in 10 CFR 73.1. By order dated February 25, 2002 (Interim Compensatory Measures (ICM) Order), the Commission required all operating power reactor licensees to develop and adopt mitigative strategies to cope with large fires and explosions from any cause, including beyond-design-basis aircraft impacts (67 FR 9792; March 4, 2002). The Commission first proposed incorporating the continuing requirement to provide for such mitigative measures in the NRC's regulations in the proposed 10 CFR part 73 power reactor security requirements (71 FR 62663; October 26, 2006), specifically, the proposed Appendix C to 10 CFR part 73, ''Licensee Safeguards Contingency Plans.'' During development of the power reactor security final rule, the NRC determined that several significant changes to the proposed rule language would be needed to adequately address stakeholder comments and associated implementation concerns. To address these comments and concerns, the NRC proposed to relocate the provisions from 10 CFR part 73 to a new paragraph (hh) in 10 CFR 50.54, ''Conditions of licenses,'' in a supplement to the power reactor security requirements proposed rule (73 FR 19443; April 10, 2008). On March 27, 2009 (74 FR 13925), the Commission published a final rule amending existing security regulations and adding new security requirements pertaining to current and future nuclear power reactors that included the new provisions in 10 CFR 50.54(hh). All current and future power reactors are required to comply with the requirements in 10 CFR 50.54(hh), which were promulgated on the basis of adequate protection of public health and safety and common defense and security.

The current requirements, in conjunction with the revisions to 10 CFR 50.54 to address loss of large areas of the plant due to explosions or fires, will continue to provide adequate protection of the public health and safety and the common defense and security. Nevertheless, the Commission has decided to also require applicants for new nuclear power reactors to incorporate into their design additional features to show that the facility can withstand the effects of an aircraft impact. This final rule to address the capability of new nuclear power reactors relative to an aircraft impact is based both on enhanced public health and safety and enhanced common defense and security, but is not necessary for adequate protection. Rather, this rule's goal is to enhance the facility's inherent robustness at the design stage.

Requiring applicants for new nuclear power reactors to perform a rigorous aircraft impact assessment and identify and incorporate into their design those design features and functional capabilities that address the effects of a beyond-design-basis aircraft impact is consistent with the NRC's historic approach to beyond-design-basis events and with the NRC's position in its ''Policy Statement on Severe Reactor Accidents Regarding Future Designs and Existing Plants'' (50 FR 32138; August 8, 1985). The policy statement notes, ''The Commission expects that vendors engaged in designing new standard [or custom] plants will achieve a higher standard of severe accident safety performance than their prior designs.'' The NRC reiterated that regulatory approach in its ''Policy Statement on the Regulation of Advanced Nuclear Power Plants'' (59 FR 35461; July 12, 1994), when it stated, ''The Commission expects that advanced reactors would provide enhanced margins of safety and/or utilize simplified, inherent, passive, or other innovative means to accomplish their safety functions.'' These concepts continue to be NRC policy as reflected in the NRC's 2008 ''Policy Statement on the Regulation of Advanced Reactors'' (73 FR 60612; October 14, 2008). This regulatory approach has demonstrated its success, as all designs subsequently submitted to and certified by the Commission represent substantial improvement in safety for operational events and accidents. The final aircraft impact rule will further enhance the safety of new nuclear power plants for aircraft impacts and is consistent with these policy statements.

The Commission considered the appropriate location for requirements on an aircraft impact assessment during its deliberations on the security assessment rulemaking (draft 10 CFR 73.62) proposed by the NRC staff in SECY–06–0204, ''Proposed Rulemaking—Security Assessment Requirements for New Nuclear Power Reactor Designs (RIN 3150–AH92),'' dated September 26, 2006. In its Staff Requirements Memorandum (SRM) on SECY–06–0204, dated April 24, 2007, the Commission disapproved the staff's recommended rulemaking as described in SECY–06–0204. The Commission directed the NRC staff to include the aircraft impact assessment requirements in 10 CFR part 52, ''Licenses, Approvals, and Certifications for Nuclear Power Plants,'' to encourage reactor designers to incorporate practical measures at an early stage in the design process.

As a result of the Commission's SRM, the NRC published a proposed rule for comment in the **Federal Register** (72 FR 56287; October 3, 2007). The proposed rule would have required applicants to assess the effects of the impact of a

large, commercial aircraft on the nuclear power facility. Based on the insights gained from the assessment, the applicant would have been required to include in its application a description and evaluation of design features, functional capabilities, and strategies to avoid or mitigate, to the extent practicable, the effects of the aircraft impact with reduced reliance on operator actions. The public comment period for the proposed rule closed on December 17, 2007. A public meeting was held during the public comment period to discuss the proposed rule and to address any questions on the proposed rule. The NRC received 32 comment letters from industry representatives, public interest groups, and concerned citizens on the proposed rule.

This final rule revises 10 CFR parts 50, ''Domestic Licensing of Production and Utilization Facilities,'' and 52 to require applicants for new nuclear power reactors to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft. The applicant is required to identify and incorporate into the design those design features and functional capabilities to show that the facility can withstand the effects of an aircraft impact with reduced use of operator actions. This aircraft impact rule, along with provisions in the NRC's power reactor security rule, including the addition of the provisions in 10 CFR 50.54(hh), and voluntarily-submitted safeguards assessments, render as duplicative and, therefore, unnecessary the draft proposed rule (10 CFR 73.62) to require security assessments. The draft proposed security assessment rule would have required a security assessment which would include mitigation of large fires and explosions, a target set analysis, and design features to protect target sets against DBTs. The provisions of that draft proposed rule applicable to large fires and explosions from an aircraft impact are subsumed by this final aircraft impact rule and by the addition of the provisions in 10 CFR 50.54(hh). Sufficient target set provisions are included in the NRC's changes to 10 CFR 73.55, ''Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage,'' which applicants for new facilities will have to satisfy. Designers of new nuclear power reactors are encouraged to account for the provisions for mitigation of large fires and explosions in the facility design so as to minimize more costly, post-design features to meet those requirements. Design certification and combined license applicants are voluntarily submitting security assessments that identify design features to protect target sets against DBTs. Accordingly, the draft proposed 10 CFR 73.62 is not necessary.

This new aircraft impact assessment rule complements the revisions to 10 CFR 50.54(hh) to mitigate the effects of large fires and explosions. The 10 CFR 50.54(hh) provisions on mitigating large fires and explosions codify the adequate protection requirement imposed on existing operating reactors by ICM Order, Item B.5.b. The 10 CFR 50.54(hh) provisions, therefore, are necessary for adequate protection and must remain in regulations that are applicable to all currently operating reactors and must be satisfied by all newly licensed power reactors. Current reactor licensees have already developed and implemented procedures to comply with the 10 CFR 50.54(hh) requirements, and would not require any additional action to comply with those rule provisions. New applicants for and new holders of operating licenses under 10 CFR part 50 and combined licenses under 10 CFR part 52 will be required to develop and implement procedures that will employ mitigating strategies similar to those now employed by current licensees to maintain or restore core cooling, containment, and spent fuel pool cooling capabilities under the circumstances associated with loss of large areas of the plant due to explosions or fire. The requirements in 10 CFR 50.54(hh) relate to the development of procedures for addressing certain events that are the cause of large fires and explosions that affect a substantial portion of the nuclear power plant, and are not limited or directly linked to an aircraft impact. The rule contemplates that the initiating event for such large fires and explosions could be any number of DBT or beyond-DBT events. In addition, the NRC regards 10 CFR 50.54(hh) as necessary for reasonable assurance of adequate protection to public health and safety and common defense and security. This is consistent with the NRC's designation of the orders on which 10 CFR 50.54(hh) is based as being necessary for reasonable assurance of adequate protection.

In contrast to the adequate protection requirements of 10 CFR 50.54(hh), this aircraft impact final rule will enhance safety and security by requiring an assessment of newly designed facilities to show that the facility can withstand the effects of an aircraft impact. New nuclear power reactor applicants will be subject to both the requirements of the aircraft impact rule and the requirements in 10 CFR 50.54(hh). The overall objective of these rules is to enhance a nuclear power plant's capabilities to withstand the effects of a large fire or explosion, whether caused by an aircraft impact or other event, from the standpoints of both design and operation. The impact of a large aircraft on the nuclear power plant is regarded as a beyond-design-basis event. In light of the NRC's view that effective mitigation of the effects of events causing large fires and explosions (including the impact of a large, commercial aircraft) can be provided through operational actions, the NRC believes that the mitigation of the effects of aircraft impacts through design should be regarded as a safety enhancement which is not necessary for adequate protection. Therefore, the aircraft impact rule—unlike 10 CFR 50.54(hh)—is regarded as a safety enhancement, which is not necessary for adequate protection.

The NRC regards the aircraft impact and 10 CFR 50.54(hh) rulemakings to be complementary in scope and objective. The aircraft impact rule focuses on enhancing the design of future nuclear power plants to withstand large, commercial aircraft impacts, with reduced use of operator actions. The provisions of 10 CFR 50.54(hh) focus on ensuring that the nuclear power plant's licensees will be able to implement effective mitigation measures for large fires and explosions, including (but not explicitly limited to) those caused by the impact of a large, commercial aircraft.

Consideration of a rule to require applicants for new nuclear power reactors to perform an aircraft impact assessment and describe design features and functional capabilities addressing such impacts, which are beyond-design-basis scenarios, is similar to the Commission's consideration in the mid-1980's of new rules addressing accidents more severe than design basis accidents. The 1985 ''Policy Statement on Severe Reactor Accidents'' explained the Com mission's conclusion that, although it was proposing criteria to show new reactor designs to be acceptable for severe accident concerns, then-existing plants posed no undue risk to public health and safety, and thus, there was no need for action on operating reactors based on severe accident risks. The Commission's reasoning in the severe accident context supports its conclusion that although new nuclear power reactors should be assessed for aircraft impacts and designed to show that they can withstand the effects of an aircraft impact, existing reactors and designs

provide adequate protection of the public health and safety and common defense and security.

The NRC is making several changes from the proposed rule requirements in this final rule. First, based on consideration of public comments, the NRC is revising the criteria necessary to comply with the final rule. The proposed rule would have required applicants for new nuclear power reactors to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft. Based upon the insights gained from the aircraft impact assessment, the applicant would have been required to include a description and evaluation of the design features, functional capabilities, and strategies to avoid or mitigate the effects of the applicable, beyond-design-basis aircraft impact and describe how such design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions. The evaluation of such design features, functional capabilities, and strategies would have been required to include core cooling capability, containment integrity, and spent fuel pool integrity. In the final rule, applicants continue to be required to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft. In addition, the applicant is required to use realistic analyses to identify and incorporate into the design those design features and functional capabilities which show, with reduced use of operator action, that the reactor core remains cooled or the containment remains intact and spent fuel cooling or spent fuel pool integrity is maintained. The final rule removes references to considering the practicality of including the design features and functional capabilities identified as a result of the assessment. The acceptance criteria in the rule must be shown to be met to achieve compliance with the rule's requirements.

The Commission ultimately decided that the final rule should require applicants to show that, in the event of an aircraft impact at a nuclear power plant, the reactor core would remain cooled or the containment structure would remain intact and spent fuel cooling or spent fuel pool integrity would be maintained. With implementation of this final rule, applicants for new nuclear power reactors can use realistic analyses to assess their designs but cannot rely solely on operator actions to meet the acceptance criteria. The Commission continues to believe that subsequent generations of plants to be built in the U.S. will be inherently more capable of resisting beyond design basis events, including aircraft impacts, due to safety improvements previously incorporated into these designs. The addition of this rule, revised to include specific acceptance criteria, will provide additional assurance that all reasonable design measures were taken to add additional margin beyond the adequate protection standard that is being met through compliance with 10 CFR 50.54(hh). The addition of specific acceptance criteria to this rule adds regulatory stability and predictability that is not achievable with criteria that must only be met ''to the extent practical.'' Acceptance criteria that are based on functional requirements provide a benchmark that can be assessed for the purpose of determining compliance with this rule, yet provide the distinction necessary to keep enhancements implemented for a beyond-design-basis event separate from design requirements necessary to meet 10 CFR part 100, ''Reactor site criteria.''

The NRC is also expanding the class of applicants that are required to comply with this rule based on consideration of public comments and implementation issues. In one change, the NRC is applying the final rule to 10 CFR part 50 license applicants as well as applicants under 10 CFR part 52. The final rule requires both new power reactor construction permit applicants and operating license applicants to perform the required assessment and include the description of the identified design features and functional capabilities in their applications. The NRC is applying the final rule to applicants at both the construction permit and operating license stages because it is not until the operating license stage that the applicant is required to provide the NRC with its final design. The NRC can issue a construction permit based on preliminary design information. Therefore, the NRC believes it is necessary to require applicants to perform the aircraft impact assessment at both stages and to include the required information in both applications based on the level of design information available at the time of each application. These changes are reflected in the addition of new paragraphs (a)(13) and (b)(12) in 10 CFR 50.34, ''Contents of construction permit and operating license applications; technical information,'' requiring all applicants for a construction permit or operating license which are subject to 10 CFR 50.150(a) (proposed 10 CFR 52.500) to submit the information required by 10 CFR 50.150(b) as a part of their application. Paragraph (a) of 10 CFR 50.150 has similarly been revised.

In making these additions, the NRC is making it clear that the requirements are not meant to apply to current or future operating license applications for which construction permits were issued before the effective date of this final rule. This is because existing construction permits are likely to involve designs which are essentially complete and may involve sites where construction has already taken place. Applying the final rule to operating license applications for which there are existing construction permits could result in an unwarranted financial burden to change a design for a plant that is partially constructed. Such a financial burden is not justifiable in light of the fact that the NRC considers the events to which the aircraft impact rule is directed to be beyond-design-basis events and compliance with the rule is not needed for adequate protection to public health and safety or common defense and security. Moreover, such operating license applicants will be required to comply with the requirements in 10 CFR 50.54(hh) to identify actions to mitigate the effects of large fires and explosions, including those caused by aircraft impacts. For these reasons, the NRC is not requiring operating license applicants with an existing construction permit to comply with the final rule.

The NRC is also adding requirements in 10 CFR 50.150(c) (proposed 10 CFR 52.502) for controlling changes to the information required by 10 CFR 50.150(b) to be included in the preliminary safety analysis report (PSAR) by a construction permit applicant and the final safety analysis report (FSAR) by an operating license applicant. The NRC is applying the same change control requirements to construction permit and operating license holders as it is applying to combined license holders. If the permit holder or licensee changes the information required by 10 CFR 50.34 to be included in the PSAR or FSAR, then the permit holder or licensee must consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a) and amend the information required by 10 CFR 50.34 to be included in the PSAR or FSAR to describe how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1).

Because the final rule is applicable to applicants under both 10 CFR parts 50

and 52, the NRC is relocating the aircraft impact assessment requirements that were contained in proposed 10 CFR 52.500 to a new section, 10 CFR 50.150. This change is also consistent with the recent revision to 10 CFR part 52, where the NRC took a comprehensive approach to reorganizing 10 CFR part 52 and making conforming changes throughout 10 CFR Chapter I, ''Nuclear Regulatory Commission,'' to reflect the licensing and approval processes in 10 CFR part 52. In making conforming changes involving 10 CFR part 50 provisions in that rulemaking, the NRC adopted the general principle of keeping technical requirements in 10 CFR part 50 and maintaining applicable procedural requirements in 10 CFR part 52. For these reasons, the NRC is relocating the proposed aircraft impact requirements from proposed 10 CFR 52.500 to 10 CFR 50.150.

Based on public comments, the NRC is making the requirements in 10 CFR 50.150 applicable to the four existing design certifications in 10 CFR part 52, appendices A through D, at their first renewal if the design has not previously been amended to comply with the final rule. This change is discussed in detail in Section IV, ''Renewal of an Operating License, Standard Design Certification, Combined License, or Manufacturing License,'' of this document.

The NRC is also making several changes to the terminology that was used in the proposed rule. In the proposed rule, 10 CFR 52.500 stated that applicants for new nuclear power reactors were required to perform a design-specific assessment of the effects on the designed facility of the impact of a large, commercial aircraft. Based on the insights gained from that assessment, applicants would have been required to include a description and ''evaluation'' of the design features, functional capabilities, and strategies to avoid or mitigate the effects of the applicable aircraft impact. Reference to such an ''evaluation'' was made throughout the Supplementary Information in the proposed rule. However, the NRC determined that the term ''evaluation'' was used in more than one context and concluded that such inconsistent use could cause confusion. In the final rule, the NRC has eliminated the use of the term ''evaluation'' in the rule language. The new requirements governing what covered applicants are required to submit in their applications (10 CFR 50.150(b)) states that applicants must submit a description of the design features and functional capabilities identified in the assessment and a description of how the identified design features and functional capabilities meet the assessment requirements.

Another area where the NRC is changing the terminology used in the final aircraft impact rule is the elimination of the term, ''strategies.'' The proposed aircraft impact rule required the assessment to include a description of the design features, functional capabilities, and strategies to avoid or mitigate the effects of the applicable, beyond-design-basis aircraft impact (proposed 10 CFR 52.500(c)). Neither the proposed rule nor its Supplementary Information defined ''strategies.'' Upon consideration, the NRC has decided to eliminate that term in the final rule. A ''strategy'' is typically associated with human action and may, therefore, appear to conflict with the direction in 10 CFR 50.150(a)(1) of the final aircraft impact rule that there should be ''reduced use of operator actions.'' In addition, the aircraft impact rule is focused only on design, and was not intended to address or impose requirements on the operation of a facility. By using the term, ''strategies'' in the proposed aircraft impact rule, there is a real possibility that stakeholders may erroneously interpret the aircraft impact rule as requiring a designer to address as part of the aircraft impact rule the requirements in 10 CFR 50.54(hh) to mitigate the effects of large fires and explosions. This would be an unnecessary duplication of effort, and would require consideration of procedural and operational matters at an early stage, which is not the NRC's intent and may not be the optimal time for consideration of operational matters. For these reasons, the NRC is dropping its use of the term ''strategies'' in the final rule. Thus, under 10 CFR 50.150(b), the relevant applicants need only include in their applications a description of the relevant identified design features and functional capabilities, and need not address strategies. The elimination of the term ''strategies,'' does not, however, relieve applicants from the responsibility to consider reducing use of operator actions in performance of the aircraft impact assessment and identification of design features and functional capabilities to comply with this final rule.

In addition, the NRC's decision to remove the need for the designer to identify design ''strategies'' does not obviate the need for the designer to determine, when considering potential design features and functional capabilities, whether there are responsive actions and strategies (*e.g.,* firefighting) that the nuclear power plant licensee could take to mitigate the effects of the impact of a large, commercial aircraft that would be made possible, or whose effectiveness could be enhanced, by inclusion of such features and capabilities in the design. One objective of the final aircraft impact rule is that the designer identifies and includes in the design those features and capabilities to support the eventual development of effective response and mitigation actions and strategies at the facility licensing stage which make possible or enhance the capability of the plant licensee to respond to aircraft impacts. The NRC believes that it is reasonable for the designer to include appropriate design features and functional capabilities to support practical responsive actions and strategies that the plant licensee could implement. The plant licensee should not be precluded from using an effective responsive action and strategy, simply because the designer failed to include a well-placed design feature that is necessary for an effective responsive action (*e.g.,* a wall, a water outlet, a control panel).

Finally, the Commission is adding a requirement in the final rule that any changes to the detailed aircraft impact parameters set forth in guidance shall be approved by the Commission.

II. Currently Operating Power Reactors

The Commission has determined that the existing designs of currently operating nuclear power plants, together with the security program actions mandated by the NRC's orders (some of which are codified in the NRC's final DBT rulemaking and others of which are incorporated into other NRC regulations) provide an adequate level of protection to public health and safety and common defense and security against aircraft impacts. As a result of the events of September 11, 2001, the NRC has undertaken a series of actions to provide continued reasonable assurance of adequate protection to public health and safety and common defense and security at the U.S. commercial nuclear power facilities. The NRC has assessed the potential vulnerabilities of operating nuclear power reactors to aircraft impacts, and it has issued orders and provided associated guidance to licensees for implementing a range of mitigative strategies. The results of these aircraft impact assessments were derived from evaluation of plant damage mechanisms (*e.g.,* structural failures, shock and vibration effects, and fire effects). The NRC ensured that implementation of the February 25, 2002, ICM Order included measures to mitigate such scenarios.

The Commission's ICM Order, Item B.5.b, established the requirement for licensees to implement certain mitigation measures at existing power reactors for these beyond-design-basis events. This requirement was specifically intended to address ''losses of large areas of a (reactor) plant due to fires and explosions.'' The Commission has since incorporated this requirement into 10 CFR 50.54 in the power reactor security rulemaking. Under the provisions of 10 CFR 50.54, future license applicants must identify and implement mitigative measures similar to those required for currently operating nuclear power plants.

On March 19, 2007 (72 FR 12705), the Commission published a final rule amending the DBT in 10 CFR 73.1. The DBT rule describes general attributes that nuclear power plant licensees must defend against with high assurance. This rulemaking enhanced the DBT by codifying generically applicable security requirements similar to those previously imposed by the Commission's April 29, 2003, DBT Orders.

On the basis of the previous information, the NRC concludes that existing power reactors pose no undue risk to public health and safety or common defense and security from the effects of an aircraft impact based on the Commission's specified aircraft impact characteristics. Therefore, the NRC is not applying this final rule to existing operating nuclear power plants.

III. Currently Approved Standard Design Certifications and Combined Licenses Referencing These Certifications

Based upon consideration of public comments, the NRC has decided that the designs of all newly designed and constructed nuclear power plants (*i.e.,* those designed and constructed after July 13, 2009) must comply with the aircraft impact rule. The NRC agreed with the majority of commenters who stated that the underlying objectives of the aircraft impact rule would not be fully achieved if a subset of new nuclear power plant applicants—namely, those applicants who reference one of the four existing design certifications—is not required to comply with the aircraft impact rule. This decision stems from acknowledgement of the views expressed by a wide range of stakeholders in favor of requiring all new nuclear power plants to meet the requirements of the aircraft impact rule. Thus, the NRC is requiring that all new nuclear power plants in the U.S. be required to use designs that comply with the aircraft impact rule.

In evaluating this change, the NRC considered regulatory approaches that could be used if a combined license application references one of the four currently approved standard design certifications in Appendices A through D of 10 CFR part 52 which has not been voluntarily amended to comply with the aircraft impact rule. The NRC considered whether the combined license applicant should be required to perform the assessment of aircraft impacts itself and use the design features and functional capabilities identified as the result of its assessment in the design of their plant, but with no obligation to modify the referenced design certification. A second approach considered by the NRC would require that the four currently approved design certifications be amended by the original design certification applicant to comply with the aircraft impact rule within a short time after issuance of the final aircraft impact rule. The NRC also considered a third approach, whereby the NRC would require that the four currently approved design certifications be amended to comply with the aircraft impact rule (without specifying who is responsible for prosecuting the amendment), but only if they are referenced in a combined license application. This approach would also restrict the NRC from issuing a combined license referencing one of the four currently approved design certifications, unless it had been amended to comply with the aircraft impact rule (again, without specifying who is responsible for prosecuting the amendment). The NRC has determined that the first approach should be adopted in the aircraft impact rule (*i.e.,* the combined license applicant be required to perform the assessment of aircraft impacts and incorporate design features and functional capabilities into the design of the applicant's facility with no concurrent obligation to modify the referenced design certification). The NRC believes that this approach will ensure that a nuclear power plant which is constructed using one of the currently approved design certifications will nonetheless meet the aircraft impact rule without unnecessary delays associated with amending the referenced design certification rule. The NRC recognizes that the first approach may result in less standardization of design features and functional capabilities addressing aircraft impact for nuclear power plants referencing one of the four currently approved design certifications. However, the NRC believes that, as a practical matter, given the likely small number of combined license applications referencing one of the four currently approved design certifications which has not been amended to comply with the rule, any reduction in standardization is likely to be minimal.

However, the NRC has also decided that if any of the four currently approved design certifications are not amended to comply with the aircraft impact rule by the end of the initial period of effectiveness and an applicant seeks to renew the design certification, then the certified design must be amended to comply with the aircraft impact rule before the renewal is approved by the NRC under the provisions of 10 CFR 52.57 through 10 CFR 52.61. The NRC's determination in this regard is discussed in Section IV, ''Renewal of an Operating License, Standard Design Certification, Combined License, or Manufacturing License,'' of this document. The NRC has concluded that it should use the same criteria for evaluating voluntary requests for amendments to existing design certifications as it uses for evaluating new applications for design certifications, to ensure consistency among all new reactor designs.

IV. Renewal of an Operating License, Standard Design Certification, Combined License, or Manufacturing License

This rulemaking does not require updating the assessment of aircraft impacts required by 10 CFR 50.150 as part of an application for either a renewed operating license under 10 CFR part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' a renewed design certification under 10 CFR 52.57, ''Application for renewal,'' a renewed combined license under 10 CFR 52.107, ''Application for renewal,'' and 10 CFR part 54, or a renewed manufacturing license under 10 CFR 52.177, ''Application for renewal.'' The NRC's requirement for assessment of large, commercial aircraft impacts is not an aging-related matter, nor is it based on time-limited considerations. Hence, aircraft impacts under the final rule are outside the scope of any operating license or combined license renewal proceeding under 10 CFR part 54, and neither operating nor combined license holders need to update the assessment required by 10 CFR 50.150(b) at the license renewal stage.

With regard to design certifications and manufacturing licenses which comply with the aircraft impact rule upon initial issuance or upon amendment, the NRC believes that their renewal review should not include a

reassessment of aircraft impacts and possible changes to the design to include new design features and functional capabilities. In the NRC's view, there will not be any significant benefit to requiring applicants for renewal to reassess the design's vulnerability to aircraft impacts absent a Commission-approved change in the detailed parameters on aircraft impact characteristics set forth in guidance for use in the aircraft impact assessment. As discussed later in Section V.B, ''Description of Beyond-Design-Basis Aircraft Impact,'' of the Supplementary Information for this final rule, the final rule requires that the design-specific impact assessment use the Commission-specified aircraft impact characteristics as described in 10 CFR 50.150(a)(2) and changes to the detailed parameters on aircraft impact characteristics set forth in guidance shall be approved by the Commission. Because this final rule is intended to provide added protection against the effects of a beyond-design-basis event, the choice of aircraft impact characteristics and the scenario used for this assessment will not be linked to threat assessments or to any evolution of aircraft design. Therefore, there is no need to require a reassessment at the design certification or manufacturing license renewal stage. In addition, mandating a change to the design at the renewal stage would pose an undue burden on those licensees who have referenced the design certification in their license, or used the manufactured reactor at their facility. Under 10 CFR 52.63(a)(3) and 10 CFR 52.171(a)(2), the NRC requires that any modification it imposes on a design certification rule or on the design of a manufactured reactor be applied to all plants referencing the certified design or reactor manufactured under the manufacturing license, except those to which the modification has been rendered technically irrelevant. If the NRC were to require reassessment of the design at renewal, this could cause licensees who have already designed and constructed their plants (or used a manufactured reactor) to modify their plants to come into conformance with the reassessed design. Such modifications are likely to be costly. Given the NRC's determination that the impact of a large, commercial aircraft is a beyond-design-basis event, the imposition of such costs as the result of reassessment at design certification or manufacturing license renewal does not seem warranted. Moreover, once the design features and functional capabilities for addressing an aircraft impact have been incorporated into a nuclear power plant's design, the goal of this final rule has been achieved in that consideration of aircraft impacts has been factored into the design. In any event, 10 CFR 52.59, which establishes limited finality control over the NRC's renewal of design certifications, does permit the NRC to impose modifications to the design at design certification renewal under certain circumstances (see 10 CFR 52.59(b)(1) through (3)). Accordingly, given that future design certifications and manufacturing licenses must, under the final aircraft impact rule, meet the requirements of the rule upon initial issuance, the NRC has decided that these design certifications and manufacturing licenses need not be required by rule to update the aircraft impact assessment at the time of renewal.

However, upon consideration of these factors in relation to the renewal of the four currently approved design certifications, the NRC has come to the conclusion that if any of these four design certifications have not been updated in the first 15-year duration of effectiveness, then the design must be amended to comply with the aircraft impact rule at the time of renewal under 10 CFR 52.57 through 52.61. In this situation, the NRC believes that regulatory consistency, predictability, and efficiency all favor requiring any of the four current design certifications which have not been amended to meet the aircraft impact rule at the time of renewal of the design certification to comply with the aircraft impact rule as part of the renewal process.

The NRC's determination is reflected in the final rule as an amendment to 10 CFR 52.59(a). As revised, paragraph (a) requires the NRC to find, at the first renewal of any of the four currently approved design certifications, that the renewed design (i.e., the design which is being approved for use in the renewed term of the design certification rule) complies with the requirements of the aircraft impact rule.

The NRC has determined, consistent with the intent of 10 CFR 52.59(b), that requiring the renewed design to comply with the aircraft impact rule constitutes a substantial increase in protection to public health and safety. The reasons supporting this determination are set forth in Section XVI, ''Backfit Analysis,'' of the Supplementary Information for this final rule. The NRC wishes to emphasize that imposing this requirement on the renewal of the four currently approved design certifications does not represent any substantial decrease in the commercial interests of the original applicants for these design certifications (or their successors in interests). Accordingly, the NRC concludes that the four currently approved design certifications, if they have not already been amended to comply with the aircraft rule, must comply with the rule the first time any of those design certifications are renewed.

The NRC notes that one of the consequences of the NRC's determination that each of the four currently approved design certifications must comply with the aircraft impact rule if renewed, is that there may be increased public confidence in the safety of the renewed designs. The NRC's view is based upon public comments from several stakeholders urging that the four design certifications be required to comply with the aircraft impact rule.

V. New Nuclear Power Reactors

A. Introduction

Under this final rule, relevant applicants for new nuclear power reactors are required to:

- Perform an assessment of the effects on the designed facility of a beyond-design-basis aircraft impact.
- Using realistic analyses, identify and incorporate into the design those design features and functional capabilities to show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact (*i.e.,* that the rule's acceptance criteria are met).
- Describe how such design features and functional capabilities show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact.

This final rule is based on the premise that it is desirable for newly-constructed power reactors to be designed to withstand the effects of an aircraft impact through design features or functional capabilities that reduce or eliminate the need for operator actions. Because this type of consideration is more effectively done during the development of the design itself, the NRC directs the requirements of this final rule at plant designers.

The NRC does not expect plant designers to demonstrate that design features alone, without operator action or mitigative response activity as required under 10 CFR 50.54(hh), will completely address the effects of the aircraft impact. The NRC recognizes that the decision to rely on design features (as opposed to operator action or mitigative strategies required under 10 CFR 50.54(hh)) is complex, and often involves a set of trade-offs between competing considerations. The NRC's goal is to have the designer implement

a rigorous assessment process to ensure that the design process constitutes a reasoned approach for assessing the plant design to identify design features and functional capabilities to show that the facility can withstand the effects of an aircraft impact.

B. Description of Beyond-Design-Basis Aircraft Impact

Since September 11, 2001, the Commission has used state-of-the art technology to assess the effects of aircraft impacts on nuclear power plants. As part of a comprehensive review of security for NRC-licensed facilities, the NRC conducted detailed, site-specific engineering studies of a limited number of nuclear power plants to assess potential vulnerabilities of deliberate attacks involving large, commercial aircraft. In conducting these studies, the NRC consulted national experts from several Department of Energy laboratories using state-of-the-art structural and fire analyses. The agency also used realistic predictions of accident progression and radiological consequences.

This final rule presents a general description of the aircraft impact characteristics that are required to be used to perform the beyond-design-basis aircraft impact assessment. The assessment must be based on the beyond-design-basis impact of a large, commercial aircraft used for long distance flights in the U.S., with aviation fuel loading typically used in such flights, and an impact speed and angle of impact considering the ability of both experienced and inexperienced pilots to control large, commercial aircraft at the low altitude representative of a nuclear power plant's low profile.

Beyond these general characteristics, the NRC will specify for plant designers in a safeguards information (SGI) guidance document more detailed parameters describing the large, commercial aircraft impact that are considered appropriate for use in the required assessment. Although the detailed aircraft impact assessment parameters will be described in an SGI guidance document and will not be publicly available because of their potential value to terrorists, the following description of some of the factors used in selecting the parameters is offered to foster a better understanding of this final rulemaking. Changes to these detailed parameters on aircraft impact characteristics set forth in this guidance shall be approved by the Commission.

1. *The aircraft used by the terrorists on September 11, 2001.* The NRC staff has reviewed the results of the September 11, 2001 attacks on the World Trade Center and the Pentagon. The NRC has used these reviews in previous studies for operating reactors. The NRC also used these reviews to make its decisions with respect to this final rulemaking.

2. *Communications with other U.S. Government agencies.* Since September 11, 2001, the NRC has worked closely with the Department of Homeland Security, the Department of Defense, and other agencies, both to understand their information on terrorist threats and to communicate the NRC's study results.

3. *Communications with foreign governments.* A number of foreign governments are considering the construction of new nuclear power plants. The NRC is communicating with the regulatory authorities in these countries to understand their requirements and to convey its own results and plans.

4. *Evaluations of commercial aircraft.* The NRC has studied the types, numbers, and characteristics of commercial aircraft flown in U.S. airspace.

Because this final rule is intended to provide added protection against the effects of a beyond-design-basis event, the choice of aircraft impact characteristics and the scenario used for this assessment will not be linked to threat assessments or to any evolution of aircraft design. The final rule requires that the design-specific impact assessment use the Commission-specified aircraft impact characteristics as described in 10 CFR 50.150(a)(2) (proposed 10 CFR 52.500(b)). As stated previously, more specific details about the aircraft impact characteristics will be contained in a separate guidance document under SGI controls. Because this guidance document containing more detailed aircraft impact assessment parameters will be SGI, the document will only be made available to those individuals with a need-to-know and who are otherwise qualified to have access to SGI. Plant designers (including their employees and agents) who meet the Commission's requirements for access to SGI will have access to the guidance document containing these more detailed parameters to perform the assessments required by this final rule.

C. Aircraft Impact Assessment

Technical Issues

Because the aircraft impact is a beyond-design-basis event, the methods and acceptance criteria used should be based on realistic assumptions. The aircraft impact assessment is expected to include the items detailed in the following paragraphs:

1. *Consideration of aircraft impact characteristics.* The assessment must consider the impact of a large, commercial aircraft of the type currently in use for long distance flights in the U.S. as described previously in this document and in 10 CFR 50.150(a)(2). More detailed aircraft impact assessment parameters that are considered appropriate for use in this assessment will be contained in a separate guidance document under SGI controls.

2. *Plant functions, structures, systems, components, and locations to be assessed.* The critical functions required to be evaluated in the aircraft impact assessment include core cooling capability, containment, spent fuel cooling capability, and spent fuel pool integrity. Evaluation of the survivability of these critical functions should consider not only the key components, but also power supplies, cable runs, and other components that support these functions. The assessment may take credit for the availability of both safety and non-safety equipment. The assessment should evaluate whether the structures containing equipment that provides these critical functions are likely to be affected by the specified large, commercial aircraft impact. Factors to be considered in the assessment include the size and location of the structures and the presence of external impediments to impact.

3. *Damage mechanisms.* The assessment should model the structural response, shock and vibration effects, and fire effects of the aircraft impact.

a. *Structural assessment.* The structural assessment should be based on a detailed structural model of the plant taking into account the nonlinear materials and geometric behavior. The assessment should consider both local and global (plant-wide) behavior, as well as thermal effects resulting from fire.

b. *Shock assessment.* The assessment should evaluate both the local and global (plant-wide) shock and vibration effects resulting from the aircraft impact.

c. *Fire assessment.* The fire assessment should consider the extent of structural damage and aviation fuel deposition, if any, spread within the impacted buildings. The assessment should consider both short- and long-term fire effects.

4. *Consideration of potential responsive actions and strategies in identifying design features and functional capabilities.* In determining

design features and functional capabilities, the designer is expected to consider the potential responsive actions and strategies in determining what design features and functional capabilities to adopt. After considering potential actions and strategies, the designer may identify design features and functional strategies that would facilitate the implementation and/or enhance the effectiveness of such responsive actions and strategies. An objective of the rule is to ensure that practical actions and strategies that the nuclear power plant licensee could use to respond to the effects of an aircraft impact are not precluded by the design and are available as effective options through inclusion of appropriate design features and functional capabilities.

Regulatory Treatment of the Assessment

The aircraft impact assessment will be subject to inspection by the NRC and, therefore, must be maintained by the applicant along with the rest of the information that forms the basis for the relevant application, consistent with paragraph (b) of 10 CFR 52.0, ''Scope; applicability of 10 CFR Chapter I provisions,'' 10 CFR 50.70, ''Inspections,'' and 10 CFR 50.71, ''Maintenance of records, making of reports.'' The applicant is not required to submit the aircraft impact assessment—as opposed to the ''description of the identified design features and functional capabilities'' required by 10 CFR 50.150(b) (proposed 10 CFR 52.500(c))—to the NRC in its application.

Under the final rule, the NRC will confirm that the information required by 10 CFR 50.150(b) is included in the applicant's PSAR or FSAR, namely, the description of the design features and functional capabilities identified as a result of the assessment and a description of how those features and capabilities show, with reduced use of operator action, that the assessment requirements in 10 CFR 50.150(a)(1) are met. The NRC will review the information contained in the application and reach conclusions as to whether the applicant has: (1) Adequately described design features and functional capabilities in accordance with the aircraft impact rule; and (2) conducted an assessment reasonably formulated to identify design features and functional capabilities to show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact. The NRC's decision on an application subject to 10 CFR 50.150 will be separate from any NRC determination that may be made with respect to the adequacy of the impact assessment which the rule does not require be submitted to the NRC. Therefore, the adequacy of the impact assessment may not be the subject of a contention submitted as part of a petition to intervene under 10 CFR 2.309, ''Hearing requests, petitions to intervene, requirements for standing, and contentions.'' A person who seeks NRC rulemaking action with respect to a proposed standard design certification on the basis that the requirements of the rule with respect to the identification and description of design features and functional capabilities has not been met could submit comments in the notice and comment phase of that rulemaking. A person who seeks rulemaking action after the NRC has adopted a final design certification rule on the basis that the impact assessment performed for that design certification is inadequate could submit a petition for rulemaking under 10 CFR 2.802, ''Petition for rulemaking,'' and 10 CFR 2.803, ''Determination of petition,'' seeking to amend the standard design certification. A person who seeks agency enforcement-related action on a combined license or manufacturing license on the basis of an inadequate impact assessment could file a petition under 10 CFR 2.206, ''Requests for action under this subpart.''

Applicants are only required to submit a description of the identified design features and functional capabilities identified as a result of the assessment in their PSAR or FSAR, together with a description of how the identified design features and functional capabilities comply with the rule's requirements. Applicants subject to the aircraft impact rule must make the complete aircraft impact assessment available for NRC inspection at the applicants' offices or their contractors' offices, upon NRC request in accordance with 10 CFR 50.70, 10 CFR 50.71, and Section 161.c of the Atomic Energy Act of 1954, as amended. The NRC expects that, generally, the information that it needs to perform its review of the application to assess the applicant's compliance with 10 CFR 50.150 will be that information contained in the applicant's FSAR. However, if the NRC believes, during the course of its review of the application, that the application contains incomplete or insufficient descriptions of the design features and functional capabilities included in the design, or insufficient discussions of how those features and capabilities show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact, then the NRC may request additional information or may review the assessment prior to issuance of the design certification, approval, or license, as applicable.

The NRC will confirm that the impact assessment was performed consistent with the regulatory requirements, but, consistent with the previous discussion, the NRC's confirmation will proceed independently of the NRC's licensing or approval action on the relevant application. The NRC may take appropriate enforcement action for any violations of applicable NRC requirements, including, but not limited to, 10 CFR 50.150, ''Aircraft impact assessment;'' 10 CFR 50.5 and 10 CFR 52.4, ''Deliberate misconduct;'' and 10 CFR 50.9 and 10 CFR 52.6, ''Completeness and accuracy of information.'' A failure to perform the assessment will be a violation of the rule. The NRC expects the assessment to be rigorous. Any assessment that is inadequate to reasonably assess the aircraft impact or to identify design features or functional capabilities could be considered a violation of the rule.

For design certifications, design approvals, and manufacturing license which are subject to and/or have been determined by the NRC to be in compliance with the aircraft impact rule, issue resolution (in accordance with the applicable NRC regulations and law) will be accorded to the aircraft impact assessment, the descriptions of the design features and functional capabilities required to be included in the application, and the description of how the identified design features and functional capabilities meet the requirements of this final rule. Furthermore, the NRC has concluded in this final rulemaking that issue resolution also extends to the exclusion of design features and functional capabilities which have not been included in the facility design. This position represents a change from the NRC's proposed position as presented in the proposed rule's statement of consideration (see 72 FR 56292, third column (October 3, 2007)). The NRC's changed position on this matter stems from a review of the issue resolution provision in design certification rulemaking. Under the ''Issue Resolution'' section for each of the four current design certifications, the NRC included the following statement: ''A conclusion that a matter is resolved includes the finding that additional or alternative structures, systems, and components, design features, design criteria, testing, analyses, acceptance criteria or justification are not necessary for the [design which is certified].'' 10 CFR part 52, Appendices A through D,

paragraph IV.A. There is nothing exceptional about the technical requirements in the aircraft impact rule which suggests that this provision on issue resolution should not also apply to matters addressed by the aircraft impact rule. Accordingly, as part of this final rulemaking the NRC adopts a different position on the scope of issue resolution with respect to excluded design features and functional capabilities.

Once the applicant completes the impact assessment and identifies in the FSAR the design features and functional capabilities that it has incorporated into its design, the goal of this final rule has been achieved. Accordingly, the final rule does not require the impact assessment to be updated by either: (1) An operating license holder; (2) a design certification applicant following the NRC's adoption of a final standard design certification rule; (3) a design approval holder; (4) a manufacturing license applicant or holder whose application references a design certification or design approval; (5) a combined license applicant or holder whose application references a design certification, design approval, or manufactured reactor; or (6) a combined license or manufacturing license holder who is required to prepare its own assessment. However, if a permit holder, licensee, approval holder, or design certification applicant makes a change to the information required to be included in their PSAR or FSAR, then they will be required to consider the effect of the change on the original assessment required by 10 CFR 50.150(a) and amend the information required to be included in the PSAR or FSAR. These requirements are discussed in more detail later in this section. Also, a construction permit holder will need to update its initial assessment when it is preparing to submit its operating license application because it is only at the operating license stage that the applicant will be seeking NRC approval of its final design. No applicant or licensee will be required to update the assessment in an application for renewal under either 10 CFR 52.57, 10 CFR 52.107, 10 CFR 52.177 or 10 CFR part 54. An applicant for renewal of one of the currently approved design certifications which has not been amended to comply with the aircraft impact rule will have to perform an aircraft impact assessment before submitting its renewal application.

Record Retention Requirements

The provisions of 10 CFR 50.71(c) require that records that are required by the regulations in 10 CFR parts 50 or 52 must be retained for the period specified by the appropriate regulation. If a retention period is not otherwise specified, the licensee must retain these records until the Commission terminates the facility license. Because 10 CFR 50.150(a) (proposed 10 CFR 52.500(b)) requires the performance of the aircraft impact assessment, it falls under the category of ''records that are required by the regulations'' and therefore, the licensee will be required to retain the assessment until the Commission terminates the facility license. The NRC also expects to add specific provisions to each standard design certification rule for a design covered by 10 CFR 50.150 governing retention of the aircraft impact assessment by both the applicant for the design certification (including an applicant after the Commission has adopted a final standard design certification rule) and a licensee who references that design certification. The NRC will require applicants and licensees to retain the assessment required by 10 CFR 50.150(a) throughout the pendency of the application and for the term of the certification or license (including any period of renewal). For all applicants, the supporting documentation retained onsite should describe the methodology used in performing the assessment, including the identification of potential design features and functional capabilities to show that the acceptance criteria in 10 CFR 50.150(a)(1) will be met.

Identification of Design Features and Functional Capabilities

The final rule requires designers of new facilities to describe how the design features and functional capabilities identified in performance of the aircraft impact assessment show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact (*i.e.,* that the rule's acceptance criteria are met). Plant structures critical to maintaining facility safety functions should be designed such that an impact does not result in structural failure, and aircraft parts and jet fuel do not enter the structures. In circumstances in which an impact results in aircraft parts and jet fuel entering structures or affecting equipment, plant structures and layouts should be evaluated with respect to maintaining key safety functions (core cooling, containment, spent fuel cooling, and spent fuel pool integrity) by addressing equipment survivability following the entry of aircraft parts and jet fuel. Key safety functions should be accomplished notwithstanding the resulting internal damage from structural loads, shock and vibration, and fire.

As discussed previously, the Commission has issued orders to operating plants requiring mitigation of the effects of losing large areas of the plant from fires and explosions. These requirements include some reliance on operator actions, such as realigning systems to ensure continued core cooling following the loss of a large area. Because this final rule applies to newly designed facilities before construction of the facility, the Commission expects that improvements can be made in the plant's design that may be even more effective than operator actions credited in operating plants. Thus, these designs should have reduced reliance, relative to current operating plants, on operator actions.

Nuclear power plants are inherently very robust, secure structures designed to withstand tornadoes, hurricanes, earthquakes, floods, and other severe events. They have redundant and diverse safety equipment so that if an active component becomes unavailable, another component or system will satisfy its function. The results of the Commission's evaluation of postulated aircraft impacts on operating reactors reinforced the value of design features such as the following:

- Reinforced concrete walls.
- Redundancy and spatial separation of key systems, structures and components.
- Diversity of power supplies.
- Compartmentalization of interior structures with pressure resisting concrete walls and doors.

The NRC expects the required assessment to consider such design features and functional capabilities and of possible improvements in these and other features and capabilities for addressing aircraft impacts.

Control of PSAR or FSAR Information

Design features or functional capabilities credited for showing that the facility can withstand the effects of an aircraft impact should be described in Chapter 19 of the FSAR, which addresses severe accidents. The design features may include structures or features unchanged from the plant design as it existed before the aircraft impact assessment (*e.g.,* an existing wall is found to be effective), structures or features included in the plant design but enhanced to improve the response to an aircraft impact (*e.g.,* an existing wall is made stronger), or new structures or features added solely to address aircraft impacts (*e.g.,* a new wall). The regulatory treatment of the design

features (*e.g.,* how changes to the features are controlled) depends on which of the previously mentioned categories apply. For example, a design feature added specifically to address the effects of an aircraft impact will be controlled only by requirements in 10 CFR 50.150(c) (proposed 10 CFR 52.502) added in this final rule or requirements that the NRC expects to add to future design certifications that will be subject to 10 CFR 50.150 (proposed 10 CFR 52.500). A safety-related structure credited in the aircraft impact assessment as a design feature will continue to be controlled by Appendix B to 10 CFR part 50, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' 10 CFR part 21, ''Reporting of Defects and Noncompliance,'' and other regulations establishing technical and administrative requirements on the non-aircraft impact functions, in addition to the requirements for control of features to address aircraft impacts.

For all applicants and licensees subject to 10 CFR 50.150, control of changes to any design features or functional capabilities credited for showing that the facility can withstand the effects of an aircraft impact will be governed by the requirements in a new paragraph (c), ''Control of changes,'' of 10 CFR 50.150. For construction permits which are subject to 10 CFR 50.150, paragraph (c)(1) requires that, if the permit holder changes the information required by 10 CFR 50.34(a)(13) to be included in the PSAR, then the permit holder must consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a) and amend the information required by 10 CFR 50.34(a)(13) to be included in the PSAR to describe how the modified design features and functional capabilities continue to meet the assessment requirements in the aircraft impact rule. Because this final rule addresses a beyond-design-basis event, the NRC has determined that it is appropriate to apply the same standard to any licensee-proposed changes to features and capabilities that were applied during the original evaluation of those design features and functional capabilities.

Paragraph (c)(2) of 10 CFR 50.150 provides that, for operating licenses which are subject to the aircraft impact rule (i.e., operating licenses for which the underlying construction permits are issued after July 13, 2009), if the licensee changes the information required by 10 CFR 50.34(b)(12) to be included in the FSAR, then the licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(b) and amend the information required by 10 CFR 50.34(b)(12) to be included in FSAR to describe how the modified design features and functional capabilities continue to meet the assessment requirements in the aircraft impact rule.

Paragraph (c)(3) of 10 CFR 50.150 governs changes to a design feature or functional capability described in a standard design certification. Such changes may not be made generically except by notice and comment rulemaking (see 10 CFR 52.63, ''Finality of standard design certifications,'' paragraphs (a)(1) and (a)(2)) and such a change must meet one of the criteria in 10 CFR 52.63(a)(1). All referencing combined licenses must implement any generic change to a design certification rule, as required by 10 CFR 52.63(a)(3). The NRC acknowledges that the applicant for a standard design certification is not directly responsible for maintaining the FSAR information once a final design certification rule is adopted by the NRC. Nonetheless, the NRC continues to believe, for the reasons set forth in the **SUPPLEMENTARY INFORMATION** for the first design certification rulemaking (see 62 FR 25800; May 19, 1997, at 25813–25814, 25826), that the original standard design certification applicant should be required to maintain the accuracy of the design certification information. Therefore, in future standard design certification rulemakings, the NRC expects to continue its practice of adopting a records management requirement analogous to Section X.A of the four existing standard design certification rules. In addition, any applicant for an amendment to a design certification is also subject to the records management requirement. In the case of amendment requests submitted by someone other than the original applicant, the NRC may need to develop appropriate rule language to reflect the record management responsibilities for information (including SGI and proprietary information) that was developed by applicants other than the original applicant. For combined license holders subject to 10 CFR 50.150(a) (*i.e.,* a licensee whose application does not reference a standard design certification, standard design approval, or manufactured reactor, or that reference a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule), 10 CFR 50.150(c)(4)(i) states that if the licensee changes the information required by 10 CFR 52.79(a)(47) to be included in the FSAR, then the licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a) and amend the information required by 10 CFR 52.79(a)(47) to be included in the FSAR to describe how the modified design features and functional capabilities continue to meet the acceptance criteria in the aircraft impact rule.

Paragraph (c)(4)(ii) of 10 CFR 50.150 governs combined license applicants or holders which are not subject to 10 CFR 50.150(a) and states that proposed departures from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the referenced standard design certification are governed by the change control requirements in the applicable design certification rule. The NRC expects to add a new change control provision to future design certification rules subject to 10 CFR 50.150 (including amendments to any of the four existing design certifications) to govern combined license applicants and holders referencing the design certification that request a departure from the design features or functional capabilities in the referenced design certification. The new change control provision will require that, if the applicant or licensee changes the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, then the applicant or licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The applicant or licensee must also describe in a change to the FSAR (*i.e.,* a plant-specific departure from the generic design control document), how the modified design features and functional capabilities continue to meet the assessment requirements in the aircraft impact rule. An applicant or licensee's submittal of this updated information to the NRC will be governed by the reporting requirements in the applicable design certification rule. The NRC expects to continue, in future standard design certification rulemakings, its practice of adopting reporting requirements analogous to Section X.B of the four existing standard design certification rules. Licensees making changes to design features or capabilities included in the certified design may also need to develop alternate means to cope with the loss of large areas of the plant from explosions or fires to comply with the requirements in 10 CFR 50.54(hh).

Paragraph (c)(4)(iii) of 10 CFR 50.150 governs combined license applicants or

holders which are not subject to 10 CFR 50.150(a) but reference a manufactured reactor which is subject to 10 CFR 50.150(a). For such applicants and licensees, proposed departures from the information required by 10 CFR 52.157(f)(32) to be included in the FSAR for the manufacturing license are governed by the applicable requirements in 10 CFR 52.171(b)(2). Paragraph (b)(2) of 10 CFR 52.171 allows an applicant or licensee who references or uses a nuclear power reactor manufactured under a manufacturing license under this subpart to request a departure from the design characteristics, site parameters, terms and conditions, or approved design of the manufactured reactor. The Commission may grant a request only if it determines that the departure will comply with the requirements of 10 CFR 52.7 and that the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the departure.

Generic changes for manufacturing licenses which are subject to 10 CFR 51.150(a) are addressed in 10 CFR 50.150(c)(5)(i), which states that generic changes to the information required by 10 CFR 52.157(f)(32) to be included in the FSAR are governed by the applicable requirements of 10 CFR 52.171. Under the provisions of 10 CFR 52.171, ''Finality of manufacturing licenses; Information requests,'' the holder of a manufacturing license may not make changes to the design features or functional capabilities described in the FSAR without prior Commission approval. The request for a change to the design must be in the form of an application for a license amendment, and must meet the requirements of 10 CFR 50.90, ''Application for amendment of license, construction permit, or early site permit,'' and 10 CFR 50.92, ''Issuance of amendment.''

Paragraph (c)(5)(ii) of 10 CFR 50.150 governs manufacturing licenses which are not subject to 10 CFR 50.150(a). Similar to a combined license application, in a manufacturing license application referencing a design certification, departures from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the referenced standard design certification are governed by the change control requirements in the applicable design certification rule.

There are no provisions in 10 CFR 50.150(c) governing changes to a standard design approval because a design feature or functional capability described in a standard design approval may not be changed generically except under an application for a new design approval. There are no provisions in 10 CFR part 52 for making generic changes to a standard design approval. Paragraph (a) of 10 CFR 52.145, ''Finality of standard design approvals; information requests,'' states that an approved design must be used by and relied upon by the NRC staff and the Advisory Committee on Reactor Safeguards in their review of any individual facility license application that incorporates by reference a standard design approval unless there exists significant new information that substantially affects the earlier determination or other good cause. Therefore, any changes to a design feature or functional capability described in a standard design approval will be subject to review by the NRC in any application that references the design approval. Note that 10 CFR 52.131, ''Scope of subpart,'' states that an applicant may submit standard designs for a nuclear power reactor or major portions thereof. To the extent that a standard design approval is issued for only a portion of a nuclear power reactor, any applicant referencing that design approval will have to separately comply with the requirements of 10 CFR 50.150 for any portion of the design not addressed in the design approval issued by the NRC.

VI. Responses to Public Comments

A. Overview of Public Comments

The public comment period for the proposed rule closed on December 17, 2007. The NRC received 32 comment letters on the proposed rule. Of those comments, 31 commenters were in favor of requiring aircraft impact assessments on nuclear power plants; one commenter was against requiring an aircraft impact assessment. Several commenters also endorsed other commenters' views, where some provided comments in addition to those they endorsed. No commenters supported the rule exactly as proposed.

Due to the large number of comments received and the length of the responses provided, this section of the final rule only provides a summary of the categories of comments with a general description of the resolution of those comments. The detailed description of the comments and the NRC responses are available electronically at the NRC's electronic Reading Room, ADAMS Accession No. ML090610124.

The proposed aircraft impact rule was published in advance of publication of draft NRC guidance for implementing the rule. The NRC indicated in the proposed rule that commenters on the proposed rule need not await the publication of the draft guidance to comment meaningfully on the proposed rule (see 72 FR 56298; October 3, 2007). The NRC only received one comment suggesting that either the proposed rule language or information on the aircraft impact characteristics which was provided in the Supplementary Information for the proposed rule prevented or significantly impeded the commenter from understanding the proposed rule or commenting on it. Moreover, as described in the following discussion, the NRC received many comments effectively (if not explicitly) directed at one or more aspects of the aircraft impact characteristics. Accordingly, the NRC concludes that the NRC provided sufficient information on the proposed aircraft impact rule to allow the public a meaningful opportunity to comment on the proposed rule's requirements.

B. Responses to Specific Requests for Comments

In Section VIII of the Supplementary Information for the proposed rule, the NRC posed eight questions for which it solicited stakeholder comments. In the following paragraphs, these questions are restated, comments received from stakeholders are summarized, and the NRC resolution of the public comments is presented.

1. *Inclusion of impact assessment in application.* The proposed rule does not require that the assessment of aircraft impacts that would be mandated by proposed 10 CFR 52.500(b) be included in the FSAR or otherwise submitted as part of the application for a standard design certification, standard design approval, combined license, or manufacturing license. However, the NRC is proposing that a description of the design features, functional capabilities, and strategies credited by the applicant to avoid or mitigate the effects of the applicable, beyond-design-basis aircraft impact be included in the FSAR submitted with the relevant application. In addition, the FSAR must contain an evaluation of how such design features, functional capabilities, and strategies to avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions. The NRC is seeking specific comments on the desirability, or lack thereof, of requiring, in the final rule, that applicants include the aircraft impact assessment required by proposed 10 CFR 52.500(b) in the FSAR or another part of the application.

Commenters' Response: The three industry commenters who addressed this question (Nuclear Energy Institute

(NEI), Morgan Lewis, and AREVA Nuclear Power (AREVA NP)) indicated that the impact assessment should not be included with the application. NEI indicated that a description [of the assessment] and the evaluation under 10 CFR 52.500(c) need to be included. In a separate comment, NEI expressed its view that the submittal on aircraft impacts would be classified as a safeguards information document.

NRC Response: The final rule does not require that the assessment of aircraft impacts be included in the PSAR or FSAR or otherwise submitted as part of the application for a construction permit, operating license, standard design certification, standard design approval, combined license, or manufacturing license. However, 10 CFR 50.150(b) does require that a description of the design features and functional capabilities credited by the applicant to show that the facility can withstand the effects of the aircraft impact be included in the PSAR or FSAR submitted with the relevant application. In addition, the PSAR or FSAR must contain a description of how such design features and functional capabilities meet the acceptance criteria in 10 CFR 50.150(a)(1). The aircraft impact assessment will be subject to inspection by the NRC and, therefore, must be maintained by the applicant along with the rest of the information that forms the basis for the relevant application. The NRC expects that, generally, the information that it needs to perform its review of the application to assess the applicant's compliance with 10 CFR 50.150 will be that information contained in the applicant's PSAR or FSAR. For these reasons, the final rule does not require applicants to submit the aircraft impact assessment to the NRC.

2. *Acceptance criteria.* The acceptance criterion contained in proposed 10 CFR 52.500 by which the NRC may judge the required assessment and evaluation is the practicability criterion addressed in paragraph (c), that is, that the applicant must describe how the ''design features, functional capabilities, and strategies avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions.'' The NRC is considering adding an additional acceptance criterion to proposed 10 CFR 52.500 for judging the acceptability of the applicant's aircraft impact assessment and evaluation. The NRC is seeking specific comments on the desirability, or lack thereof, of adding an additional acceptance criterion in the final rule beyond the proposed rule's practicability criterion. Such an additional acceptance criterion could read, for example:

> The application must also describe how such design features, functional capabilities, and strategies will provide reasonable assurance that any release of radioactive materials to the environment will not produce public exposures exceeding 10 CFR part 100 guidelines.

Commenters' Response: Three industry commenters (NEI, Morgan Lewis, and AREVA NP) opposed the use of 10 CFR part 100 dose limits as acceptance criteria for the aircraft impact rule. NEI and Morgan Lewis asserted that the use of 10 CFR part 100 dose limits would imply that the aircraft impact is a design basis event, inasmuch as 10 CFR part 100 dose limits are used to evaluate the acceptability of design features addressing design basis events. Use of 10 CFR part 100 dose limits, therefore, could be misinterpreted and result in unnecessary expenditure of industry and NRC resources. As an alternative, NEI suggested that the NRC adopt the following functional acceptance criteria: (1) Demonstrate that the reactor core remains cooled or the containment remains intact; and (2) demonstrate that spent fuel cooling or spent fuel pool integrity is maintained.

NRC Response: The NRC agrees with the commenters' recommendations for alternative acceptance criteria and agrees that 10 CFR part 100 dose limits should not be used for the purpose of this rule. The NRC decided not to adopt an additional acceptance criterion based on 10 CFR part 100 dose limits in the final rule for the reasons outlined by the commenters, namely, that the 10 CFR part 100 limits are limits that the NRC uses to judge compliance with design basis requirements. The NRC is revising the criteria necessary to comply with the final rule consistent with one commenter's suggestion. In the final rule, applicants continue to be required to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft. In addition, the final rule requires applicants to use realistic analyses to identify and incorporate into the design those design features and functional capabilities to show that, with reduced use of operator action: (1) The reactor core remains cooled or the containment remains intact, and (2) spent fuel cooling or spent fuel pool integrity is maintained. The final rule removes references to considering the practicality of including the design features and functional capabilities identified as a result of the assessment. The acceptance criteria in the rule must be shown to be met to achieve compliance with the rule's requirements.

3. *Records retention.* The proposed rule relies on the general record retention requirements in 10 CFR 50.71(c) for retention of the assessment required by proposed 10 CFR 52.500 for combined license and manufacturing license applicants subject to proposed 10 CFR 52.500. The NRC intends to similarly rely on a general design certification rule provisions for retention of the assessment required by proposed 10 CFR 52.500 for design certification applicants and combined license and manufacturing license holders that reference a design certification. The NRC is requesting specific comments on whether, *in lieu* of the specific design certification rule provisions or reliance on 10 CFR 50.71(c), the NRC should adopt as part of the final 10 CFR 52.500 rulemaking a specific provision that would explicitly mandate the retention of the assessment. Such a provision would be included in an additional paragraph of final 10 CFR 52.500, and would set forth the proposed period of retention. Inclusion of a generic records retention requirement in final 10 CFR 52.500 would preclude the need for the NRC to include a specific records retention provision in each standard design certification subject to final 10 CFR 52.500. The NRC requests comments on whether such a provision should be included in final 10 CFR 52.500, together with specific reasons in support of the commenter's position.

The NRC also requests comments on the appropriate period for retention of the assessment, evaluation, and supporting documentation. The NRC is considering the following alternatives:

- For a standard design certification, combined license, and manufacturing license the period of NRC review prior to NRC final action on the application.
- For a standard design certification and manufacturing license, the duration of the design certification or manufacturing license (*i.e.,* the period during which the design certification or manufactured reactor may be referenced, including any renewal).
- For a standard design certification or manufacturing license, until the licensee of the final referencing license has submitted a certification under 10 CFR 50.82(a), or the final referencing license has been terminated.
- For a combined license, when the licensee has submitted a certification under 10 CFR 50.82(a), or the combined license has been terminated.

Commenters' Response: All the industry commenters (NEI, Morgan Lewis, and AREVA NP) who

commented on this question stated that the existing NRC records retention requirements are sufficient. AREVA NP also stated that the records retention requirements should apply to design certification holders for the time that the design certification is in effect.

NRC Response: The NRC agrees with the commenters. No changes were made to the proposed rule's record retention requirements in the final rule. The final rule relies on the general record retention requirements in 10 CFR 50.71(c) for retention of the assessment for combined license and manufacturing license holders subject to 10 CFR 50.150. The NRC intends to similarly rely on general design certification rule provisions for retention of the assessment required by proposed 10 CFR 50.150 for design certification applicants and combined license and manufacturing license holders that reference a design certification.

4. *Requests to amend existing standard design certifications to address aircraft impacts.* The NRC has concluded that it does not need to apply the proposed rule to the four currently approved standard design certifications, as discussed in detail in Section III of the Supplementary Information of the proposed rule. Nonetheless, the original applicant (or another qualified entity) may request an amendment to the standard design certification to add design features, functional capabilities, or strategies in accordance with the requirements of 10 CFR 52.500. The NRC encourages such requests for amendment by the applicants for the four current standard design certifications because it will further enhance the already high levels of safety and security provided by these reactor designs. These design modifications may be implemented in different ways as described in Section III of the Supplementary Information of the proposed rule. However, under the proposed rule, there are no standards, other than those contained in 10 CFR 52.63(a), for judging changes to the design to address the effects of an aircraft impact. The NRC requests specific comments on whether it should use the same criterion to judge amendments to an existing design certification as it would use on a new design certification applicant under the proposed 10 CFR 52.500.

Commenters' Response: One industry commenter (NEI) stated that voluntary requests to amend existing design certifications to address aircraft impacts should be held to the same standard as new design certification applications, because to do otherwise would introduce inconsistency into the regulatory process. One industry commenter (Morgan Lewis) agreed with the NEI position, adding that if the holder of an existing design certification does not voluntarily comply with the rule, then combined license applicants that reference that design certification will still be required to comply with the proposed 10 CFR 73.55 amendment, and these applicants would not receive the benefits of any design changes in response to the proposed rule on aircraft impacts. As encouraged by the proposed rule, some commenters noted that reactor vendors with existing design certifications may voluntarily request the NRC to amend the design certifications to address aircraft impacts. Some commenters stated that the NRC should use the same criteria for evaluating such requests for amendments to existing design certifications as it uses for evaluating new applications for design certifications. Some commenters also stated that combined license applicants that reference the amendment to a design certification that voluntarily complies with the aircraft impact rule should be treated the same as a combined license applicant that references a new design certification that is required to comply with the aircraft impact rule.

NRC Response: The NRC agrees with the commenters that the NRC should use the same criteria for evaluating voluntary requests for amendments to currently approved design certifications as it uses for evaluating new applications for design certifications. To ensure consistency among all new reactor designs, the NRC must apply the same criteria to voluntary requests for amendments to existing design certifications as it uses for evaluating new applications for design certifications or applications for combined licenses that reference a design certification that has not been amended to address the aircraft impact rule.

The NRC has determined, consistent with the proposed aircraft impact rule, that the four currently approved standard design certifications in Appendices A through D to 10 CFR part 52 should not be required to comply with the final aircraft impact rule during the period of effectiveness of the initial certification period. However, an applicant for renewal of one of the currently approved design certifications that has not been previously amended to comply with the aircraft impact rule must comply with the rule during renewal. Therefore, the original applicants for the four existing design certifications (or their successors in interest) are not required to submit applications to recertify their designs as complying with the final aircraft impact rule, except at renewal if the certifications have not voluntarily been amended previously. However, based upon NRC's consideration of public comments and its assessment of alternative regulatory approaches for ensuring that all newly designed and constructed nuclear power plants comply with the aircraft impact rule, the NRC has decided that the best regulatory approach is to require any combined license applicant referencing one of these four existing design certifications to comply with the aircraft impact rule, unless the referenced design certification has been amended to comply with the aircraft impact rule.

The NRC's decision on the regulatory approach for achieving the objective that all newly-designed and constructed nuclear power plants comply with the aircraft impact rule stems from: (1) NRC's acknowledgement of the view—expressed by a wide range of stakeholders—that public confidence in future nuclear power reactors will be enhanced by requiring all newly-constructed nuclear power plants, including those based upon one of the four currently approved design certifications, to meet the requirements of the aircraft impact rule; and (2) NRC's assessment that there appears to be little or no commercial interest at this time by domestic U.S. entities in using certain design certifications. The NRC agrees with the view, expressed by many stakeholders across a wide spectrum of interests and background, that the underlying objectives of the aircraft impact rule would not be fully achieved if a subset of future nuclear power plant applicants—namely, those applicants who reference one of the four existing design certifications—are not required to comply with the aircraft impact rule. Thus, the NRC has decided that all future nuclear power plants to be constructed and operated in the U.S. should use designs which comply with the final aircraft impact rule. However, given that objective, the NRC believes that it should adopt a regulatory approach for achieving that objective in a manner that does not unduly affect the resource planning of potential combined license applicants considering referencing one of the currently approved design certifications. To adopt a regulatory approach which mandates a delay in NRC action on a combined license application referencing one of the four currently approved until that design certification is amended to comply with the aircraft impact rule

seems unduly restrictive, especially where the combined license applicant is ready and willing to comply with the aircraft impact rule. Accordingly, the NRC determined that it would adopt the regulatory approach reflected in the final rule.

5. *Applicability to future 10 CFR part 50 license applicants.* The NRC is proposing to apply the requirements in proposed 10 CFR 52.500 to 10 CFR part 52 applicants only, specifically, to applicants for standard design certifications issued after the effective date of the final rule that do not reference a standard design approval; standard design approvals issued after the effective date of the final rule; combined licenses issued after the effective date of the final rule that do not reference a standard design certification, standard design approval, or manufactured reactor; and manufacturing licenses issued after the effective date of the final rule that do not reference a standard design certification or standard design approval. However, the NRC is considering extending the applicability of the proposed 10 CFR 52.500 requirements to future applicants for construction permits under 10 CFR part 50. The NRC requests specific comments on the desirability, or lack thereof, of extending, to future 10 CFR part 50 construction permit applicants, the applicability of the proposed requirements to perform an aircraft impact assessment and to evaluate the design features, functional capabilities, and strategies to avoid or mitigate, to the extent practicable, the effects of the applicable, beyond-design-basis aircraft impact.

Commenters' Response: One industry commenter (NEI) recommended that future applicants for new construction permits under 10 CFR part 50 should be required to meet the rule, but that current holders of construction permits, including those whose plants are essentially complete, should not be required to comply with the rule. The commenter suggested that plants with an existing construction permit and plants where construction is essentially complete should be subject to the same requirements as operating plants, which are required to have mitigation actions for large area fires and explosions. To require otherwise would be impractical and result in a financial burden in changing a design that is essentially built.

NRC Response: The NRC agrees with the commenter that future applicants for new construction permits under 10 CFR part 50 should be required to meet the rule, but that current holders of construction permits should not be required to comply with the rule. The NRC is making the final rule applicable to 10 CFR part 50 license applicants as well as applicants under 10 CFR part 52 to maintain consistency in the technical requirements that are applied to new applicants under 10 CFR parts 50 and 52. The final rule requires both new power reactor construction permit applicants and operating license applicants to perform the required assessment and include the description of the identified design features and functional capabilities in their applications. The final rule is being applied to applicants at both construction permit and operating license stage because it is not until the operating license stage that the applicant is required to provide the NRC with its final design. The NRC can issue a construction permit based on preliminary design information. Therefore, the NRC believes it is necessary to require applicants to perform the aircraft impact assessment at both stages and to include the required information in both applications based on the level of design information available at the time of each application.

In making these additions, the NRC is making it clear that the requirements are not meant to apply to operating license applications for which construction permits were issued before the effective date of this final rule. This is because existing construction permits are likely to involve designs which are essentially complete and may involve sites where construction has already taken place. Applying the final rule to operating license applications for which there are existing construction permits could result in an undue financial burden to change a design for a plant that is partially constructed. Such a financial burden is not justifiable in light of the fact that the NRC considers the events to which the aircraft impact rule is directed to be beyond-design-basis events and compliance with the rule is not needed for adequate protection to public health and safety or common defense and security. Moreover, such operating license applicants will be required to comply with the requirements in 10 CFR 50.54(hh) to identify actions to mitigate the effects of large fires and explosions, including those caused by aircraft impacts. For these reasons, the NRC is not requiring operating license applicants with an existing construction permit to comply with the final rule.

6. *Addition of technical requirements to 10 CFR part 52.* In the recent revision to 10 CFR part 52, the NRC took a comprehensive approach to reorganizing 10 CFR part 52 and making conforming changes throughout 10 CFR Chapter I, ''Nuclear Regulatory Commission,'' to reflect the licensing and approval processes in 10 CFR part 52. In that rulemaking, the NRC reviewed the existing regulations in 10 CFR Chapter I to determine if the existing regulations needed to be modified to reflect the licensing and approval processes in 10 CFR part 52. In making conforming changes involving 10 CFR part 50 provisions, the NRC adopted the general principle of keeping the technical requirements in 10 CFR part 50 and maintaining all applicable procedural requirements in 10 CFR part 52. This proposed aircraft impact rule represents a departure from that general principle in that it proposes to include specific technical requirements in 10 CFR part 52 and would create a separate subpart for inclusion of future, similar, technical requirements. The NRC is considering relocating the proposed aircraft impact requirements from 10 CFR 52.500 to a new section in 10 CFR part 50 to maintain the general principle it established in the comprehensive 10 CFR part 52 rulemaking. The NRC requests specific comments on the desirability, or lack thereof, of relocating the proposed aircraft impact requirements from 10 CFR 52.500 to a new section in 10 CFR part 50.

Commenters' Response: One industry commenter (NEI) stated that the requirements should be placed in 10 CFR part 52 because the assessment relates to a beyond-design-basis event and is intended to apply to design certifications. One industry commenter (Morgan Lewis) generally agreed with NEI, but stated if the aircraft impact rule's requirements are to be imposed on future 10 CFR part 50 construction permit applicants, then the requirements should be included in 10 CFR part 50, consistent with the general principle established in the recent 10 CFR part 52 rulemaking (72 FR 49352; August 28, 2007).

NRC Response: The NRC is relocating the aircraft impact requirements from 10 CFR 52.500 as proposed to new section 10 CFR 50.150. Similarly, requirements for the control of changes to FSAR information is relocated from 10 CFR 52.502 as proposed to 10 CFR 50.150(c). These sections were relocated to maintain the general principle that the NRC established in the comprehensive 10 CFR part 52 rulemaking, that is, to maintain the technical requirements in 10 CFR part 50 for plants licensed under 10 CFR part 52. Furthermore, because the final rule is also applicable to applicants for new construction permits

and operating licenses under 10 CFR part 50, the relocation of the aircraft impact assessment requirements to 10 CFR part 50 is necessary.

7. *Applicability to design approvals and manufacturing licenses.* The proposed rule would apply to future design approvals or manufacturing licenses. In the recent comprehensive rulemaking on 10 CFR part 52, the NRC strived for a high level of consistency in the requirements for design certifications, design approvals, and manufacturing licenses, given the similarity in the regulatory functions of these three processes. However, it is not clear that there will be future design approval applications, in light of the NRC's recent determination to remove the design approval as a prerequisite for obtaining a design certification. Similarly, there does not appear to be any near-term interest in obtaining a manufacturing license for the manufacture of a nuclear power plant. Therefore, the NRC is considering eliminating the applicability of the proposed 10 CFR 52.500 requirements to future applicants for design approvals and manufacturing licenses. The NRC requests specific comments on the desirability, or lack thereof, of eliminating the applicability of the proposed 10 CFR 52.500 requirements to future applicants for design approvals and manufacturing licenses.

Commenters' Response: One industry commenter (NEI) stated that the proposed rule's requirements should not be applied to future applicants for design approvals and manufacturing licenses, but provided no rationale for its recommendation. One industry commenter (Morgan Lewis) indicated that this issue is difficult to evaluate at this time, and it would be better to defer consideration of this issue, inasmuch as the NRC could later amend the rule as necessary.

NRC Response: The NRC disagrees with the commenters because the scope of and reviews for design approvals and manufacturing licenses are essentially the same as for design certifications. The NRC sees no benefit in deferring the decision on applicability to design approvals and manufacturing licenses to a later time. Therefore, the final rule applies to future design approval or manufacturing license applicants.

8. *Scope of design evaluated.* The proposed 10 CFR 52.500 would be applicable to all standard design certifications, standard design approvals, and manufacturing licenses issued after the effective date of the final rule and to all combined licenses issued after the effective date of the final rule that do not reference a standard design certification, standard design approval, or manufacturing license. However, the proposed rule does not address the difference in the scope of the facility design that would be considered by an applicant for a standard design certification, standard design approval, or manufacturing license and the scope of the design that would be considered by a combined license applicant. For a standard design certification, standard design approval, or manufacturing license, the applicant is required to address only a subset of the facility design that a combined license applicant is required to address. In general, a design certification, design approval, or manufacturing license applicant is required to address such items as the reactor core, reactor coolant system, instrumentation and control systems, electrical systems, containment system, other engineered safety features, auxiliary and emergency systems, power conversion systems, radioactive waste handling systems, and fuel handling systems. In contrast, a combined license applicant also must address site-specific design features, such as the ultimate heat sink. Combined license applicants that do not reference a design certification, design approval, or manufactured reactor could address such site-specific design features in their evaluation of design features, functional capabilities, and strategies to avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions. However, the proposed rule does not impose any requirements on a combined license applicant that references a design certification, design approval, or manufactured reactor with regard to addressing the potential effects of an aircraft impact on such site-specific portions of the design. The proposed rule could, therefore, introduce an inconsistency in the treatment of combined license applicants that reference a design certification, design approval, or manufactured reactor and combined license applicants that submit a custom design. Therefore, to ensure consistent treatment of all combined license applicants, the NRC is considering an alternative approach in the final rule. One approach that the NRC is considering is to adopt additional requirements for combined license applicants that reference a design certification, design approval, or manufactured reactor that would require such applicants to evaluate that portion of the design excluded from the design certification, design approval, or manufactured reactor for additional design features, functional capabilities, or strategies to avoid or mitigate, to the extent practicable, the effects of the applicable aircraft impact with reduced reliance on operator actions. Alternatively, the NRC is considering limiting the scope of the evaluation for combined license applicants not referencing a design certification, design approval, or manufactured reactor to that portion of the design that would otherwise be covered in a design certification, design approval, or manufacturing license application, which would include the majority of the facility considered most vulnerable to an aircraft impact. The NRC requests specific comments on the desirability, or lack thereof, of adopting one of these alternative approaches in the final rule.

Commenters' Response: Two industry commenters (NEI and Morgan Lewis) argued that the scope of the aircraft impact assessment for combined license applicants should be the same scope as the assessment required for a new design certification. This would ensure consistency among all combined license applicants regardless of whether they reference or not reference a design certification, and would cover the majority of the portion of the plant design which is considered most vulnerable to an aircraft impact.

NRC Response: The NRC disagrees with the commenters. The NRC believes that the greatest benefit from implementation of this final rule will be achieved by having each applicant consider as much of the facility design as possible when it is performing the aircraft impact assessment. Design certification, design approval, and manufactured reactor applicants will only logically be able to consider that part of the facility design within the scope of the certification, approval, or license. However, combined license applicants that do not reference a design certification, design approval, or manufactured reactor, or reference one of the four currently approved design certifications which has not been previously amended to comply with the aircraft impact rule, will have the entire facility design available for consideration. This means, as a practical matter, that the scope of the overall plant design which is subject to the aircraft impact rule's requirements may be greater for a ''custom'' combined license applicant who does not reference a design certification, design approval, or manufactured reactor. The NRC believes it is preferable to benefit from this broader review for those combined license applicants that must perform the aircraft impact assessment than it is to limit their review to the

scope of the design that would otherwise be considered by, for example, a design certification applicant. The NRC believes its approach is preferable to that suggested by the commenters even though it results in combined license applicants that reference a certified design, design approval, or manufactured reactor assessing a different scope of the facility design than a ''custom'' combined license applicant. The NRC believes that, as a result of such an approach, combined license holders that reference a certified design, design approval, or manufactured reactor will likely need to do more work to comply with the proposed requirements for licensees to develop and adopt mitigative strategies to cope with large fires and explosions in 10 CFR 50.54(hh) than will a ''custom'' combined license holder that has assessed the entire facility at the design stage in accordance with this final rule. For these reasons, the NRC has not made any changes to the assessment requirements for combined license applicants in the final rule.

C. Responses to Remaining Comments

The comments were separated into 11 categories based on their relevance to particular topics. The comments and responses contained in the first category are summarized in Section VI.B of the Supplementary Information of this document. The comments and responses contained in the second through the eleventh category are summarized in the following paragraphs.

The second category addresses the overall need to address aircraft impacts. Some commenters supported, while others opposed, requiring an aircraft impact assessment. No changes were made to the proposed rule as a result of these comments. The NRC believes that requiring new plant designers or combined license applicants to perform this assessment will result in new plants having additional inherent protection against the effects of an aircraft impact.

The third category addresses the scope of applicants and licensees that the rule is applicable to. Some commenters suggested that the rule should also apply to all currently operating nuclear power reactors, reactors with spent fuel in onsite pool storage structures, combined license applicants (regardless of the design being referenced), and currently approved design certifications. Other commenters suggested not applying the rule to currently operating reactors. The final rule does not apply to currently operating reactors but does apply to all applicants for new nuclear power reactors. It also applies to the four currently approved design certifications, but only at renewal if they have not been voluntarily amended to comply with the aircraft impact rule.

The fourth category addresses adequate protection and consideration of aircraft impacts as a beyond-design-basis event. Some commenters agreed that aircraft impacts should be treated as a beyond-design-basis event, while others opposed the treatment of aircraft impacts as a beyond-design-basis event. Others suggested that NRC does not have the statutory authority to require consideration of the effects of an action in the nature of an attack by an enemy of the U.S. The NRC did not make any change to the proposed rule's treatment of these issues. The final rule continues to identify an aircraft impact as a beyond-design-basis event.

The fifth category addresses the Commission's specified aircraft characteristics. Some commenters suggested that the general description of aircraft characteristics is adequate, whereas others suggested that the proposed aircraft characteristics are not adequate. The description of the aircraft characteristics has not changed in the final rule.

The sixth category addresses the aircraft impact assessment. Some commenters suggested that the assessment needs to consider all real consequences of the aircraft impact, while other commenters suggested that the assessment should use standardized and validated models and be based on practical and realistic criteria, assumptions, and methodologies. The assessment requirements are not changed from the proposed rule. The final rule requires the assessment to be rigorous and performed using realistic assumptions.

The seventh category addresses the evaluation of design features, functional capabilities, and strategies as described in the proposed rule. Some commenters suggested providing acceptance criteria in the rule, clarifying the NRC's intent in using the term ''avoid,'' requiring features which would prevent the impact from occurring, preventing the applicant from implementing design tradeoffs which would negatively impact safety, and providing additional guidance on the intent of the terms ''to the extent practical'' and ''reduced reliance on operator actions.'' The final rule does provide explicit acceptance criteria to judge the results of the assessment and eliminates the use of the phrases ''avoid or mitigate'' and ''to the extent practical.'' In addition, the final rule provides additional clarification on the intent of the term ''reduced use of operator actions.''

The eighth category addresses issue resolution and regulatory implementation issues. Some commenters suggested that the final rule should clarify that the assessment and evaluation are part of the design certification rulemaking and provide issue resolution for subsequent combined license applicants, and that contentions on their adequacy will not be entertained in individual combined license proceedings. Other commenters suggested that the aircraft impact assessment need not be updated as part of a license renewal application, and others suggested that the design features incorporated into the design under a design certification are not part of the plant's physical security requirements and, therefore, not subject to review at the combined license stage. The final rule reflects that the NRC will review the information required to be submitted under 10 CFR 50.150(b) and will accord issue resolution. The NRC agreed, in general, with the comment that the aircraft impact assessment need not be updated as part of a license renewal application, with one exception. The NRC has added provisions in the final rule that have the effect of requiring each of the four currently approved design certifications to comply with the aircraft impact rule at the time of renewal, if that design has not been previously amended to comply with the aircraft impact rule. The NRC agrees that the design features selected by the designer and incorporated into a design certification are not subject to review at the combined license stage from the standpoint of compliance with the aircraft impact rule. However, the NRC disagrees with the view that design features incorporated into a design certification as a result of the aircraft impact rule would not be subject to a physical security review under 10 CFR part 73 during a combined license application proceeding where the design certification is referenced.

The ninth category addresses protection of safeguards and other sensitive information. Some commenters suggested that the aircraft characteristics should not be provided in the rule nor should details of the design features that protect against aircraft impacts be described in licensing applications. One commenter suggested that the proposed rule's failure to provide detailed aircraft parameters prevents meaningful involvement from the public and experts in industry and academia, and that the relevant September 11, 2001 aircraft parameters have been previously

published in publicly available government documents. The NRC maintains the position from the proposed rule that the general information on aircraft characteristics provided in the rule is sufficient for the purposes of public comment, and no changes were made to the final rule as a result of these comments.

The tenth category addresses compliance with the National Environmental Policy Act. Some commenters suggested that the NRC should prepare an environmental impact statement because the rule is a major federal action significantly affecting the environment and should consider alternatives to the proposed rule. The final rule did not change as a result of these comments because the rulemaking does not constitute a ''major federal action significantly affecting the quality of the human environment.''

The eleventh category addresses other comments that did not logically fit into the other categories. Commenters suggested considering other threats, not permitting siting of new reactors within 5 miles of an airport, and that the aircraft impact assessment is an aging-related matter. The final rule did not change as a result of these comments.

VII. Section-by-Section Analysis

Section 50.8 Information Collection Requirements: OMB Approval

This section, which lists all information collections in 10 CFR part 50 which have been approved by the Office of Management and Budget (OMB), is revised by adding a reference to 10 CFR 50.150, the aircraft impact rule. As discussed below, under the Paperwork Reduction Act Statement, the OMB has approved the information collection and reporting requirements in the final aircraft impact rule. No specific requirement or prohibition is imposed on applicants or licensees in this section.

Section 50.34 Contents of Construction Permit and Operating License Applications; Technical Information

This section describes the technical information which must be provided in applications for construction permits and operating licenses subject to 10 CFR 50.150. New paragraphs (a)(13) and (b)(12) require each application for a construction permit and operating license subject to the aircraft impact rule to include the information required to be submitted to the NRC by 10 CFR 50.150.

Section 50.150 Aircraft Impact Assessment

The aircraft impact rule, § 50.150, is a new requirement applicable at the design stage for new nuclear power facilities. The aircraft impact rule requires a design-specific assessment of the effects on the facility of the impact of a large commercial aircraft, and incorporation of design features and functional capabilities to show (using realistic analyses), with reduced use of operator actions, that: (1) The reactor core remains cooled or the containment remains intact; and (2) spent fuel cooling or spent fuel pool integrity is maintained. The aircraft impact rule was included in 10 CFR part 52 and designated as 10 CFR 52.500 at the proposed rule stage, but is now included in 10 CFR part 50 and redesignated as 10 CFR 50.150. This is consistent with the NRC's intention that this technical requirement applies to licenses under part 50 as well as licenses and regulatory approvals under part 52.

Paragraph (a) Assessment Requirements

Paragraph (a) sets forth the requirements for an assessment of aircraft impact to be applied to the design of new nuclear power facilities. Paragraph (a) also contains the key provisions relating to the nature of the aircraft impact characteristics to be utilized when performing the assessment. The requirements relating to the assessment are separated into two paragraphs, (a)(1) and (a)(2), to help readers distinguish between the assessment of aircraft impact, and the characteristics of the aircraft impact that must be used by the facility designer in performing the assessment. Finally, paragraph (a)(3) lists the licenses, certifications, and regulatory approvals involving nuclear power reactor design to which the assessment requirements in paragraph (a) apply.

Paragraph (a)(1) Assessment

Paragraph (a)(1) requires a design-specific assessment of the effects of an impact of a large commercial aircraft on a nuclear power reactor facility. As discussed in the section-by-section analysis for paragraph (a)(3), every new nuclear power plant will meet the aircraft impact rule, which is one of the NRC's key objectives.

Conceptually, the assessment required by the aircraft impact rule has two aspects. The first is consideration of the effects on the facility of the impact of a large commercial aircraft. The second aspect is a showing that design features and functional capabilities incorporated into the design meet, with reduced use of operator actions, the acceptance criteria in paragraphs (a)(1)(i) and (ii). The designer may perform both aspects of the assessment using realistic analyses (discussed in greater detail below). The aircraft impact characteristics that must be used by the designer in performing the assessment are defined in paragraph (a)(2) of the rule. In showing that the design features and functional capabilities incorporated into the design meet the requirements of paragraph (a), the designer should use a structured process requiring consideration of the insights gained when assessing the effects on the facility of the aircraft impact. The NRC recognizes that a designer's approach for implementing the rule may differ, depending upon the stage of completion of the facility design when this final rule is adopted or the design process that the designer chooses to employ. For example, if a facility design is largely or entirely completed when this rule becomes effective—as in the case of the current design applications under review by the NRC—the designer may focus on features and capabilities already included in the design or on potential enhancements of such features and capabilities, and then identify any additional features and capabilities. By contrast, a designer who has not yet commenced detailed design activities may decide to use an iterative screening process for identifying features and capabilities. By setting forth performance-based objectives, the aircraft impact rule does not require the designer to use a specific methodology, process or approach for identifying design features and functional capabilities that meet the acceptance criteria in paragraph (a)(1)(i) and (ii) with reduced use of operator actions. The designer may choose any number of ways to meet these performance requirements.

By a ''design-specific'' assessment, the NRC means that the impact assessment must address the specific design of the facility which is either the subject of a construction permit, operating license, standard design certification, standard design approval, combined license, or manufacturing license application. The aircraft impact rule uses the term ''facility,'' for convenience, although the NRC recognizes that the scope of design addressed in a design approval, design certification, and manufactured reactor may be less than the complete facility and will be limited to non-site-specific portions of the facility.

In performing the assessment, the aircraft rule specifies that ''realistic analyses'' be used. Analyses include

both quantitative methods and approaches, either deterministic or probabilistic, and qualitative methods and approaches, including the use of expert panels. An assessment may use quantitative and/or qualitative analyses. Regardless of the method or combination of methods employed by the designer, it must be reasonable and technically acceptable. This can be shown by demonstrating that the analytical techniques being used are generally accepted by the relevant professional/technical practitioners for performing best-estimate analysis for the given application. An analysis may not be rejected by the NRC in a licensing or rulemaking (design certification) proceeding (or otherwise challenged by an interested person in a hearing contention) on the basis that a more accurate analysis (*i.e.*, one that more closely reflects actual data or more accurately models a known physical phenomenon) is possible. In this context, ''realistic'' is a relative term and is simply intended to avoid requiring the designer to utilize conservative or bounding assumptions in recognition of the NRC's determination that the impact of a large commercial aircraft is a beyond-design-basis event. However, the designer is free to utilize bounding or more conservative approaches in order to account for uncertainties, or to reduce the cost of analysis at its option. The NRC may not require, and an interested person in a hearing contention or in a design certification rulemaking comment may not argue, that the designer must use a conservative, as opposed to a realistic, analysis, or vice versa. Rather, the NRC's review should be focused on (and any interested person in a hearing contention may only raise an issue with respect to) whether the designer's analyses are within the bounds of known data, known physical phenomena, and use professionally-accepted approaches.

''Design features and functional capabilities'' represent design alternatives that could be included in the design of a facility. Design features are structures, systems, and components (SSCs), including the physical arrangement of such SSCs. Examples of design features are major structures such as reinforced concrete walls and slabs; redundancy and spatial separation of key SSCs; and diversity of power supplies. Functional capabilities are key characteristics of such SSCs that result in their contribution to withstanding the effects of the aircraft impact. Examples of such functional capabilities are the flow capacity of a pump, the load carrying capacity of a wall, and the electrical capacity of power supplies. When identifying potential design features and functional capabilities for inclusion in the design, the designer is expected to consider whether these design features and functional capabilities would facilitate the implementation and/or enhance the effectiveness of practical responsive and mitigation actions that the nuclear power plant licensee could implement. For example, if the designer determines that a fire load due to the aircraft impact in a specific area could be extinguished or controlled through the placement of a standpipe and hose near the area, or that a fire affecting critical components with a limited time-temperature rating could be more quickly controlled with a larger amount of water delivered through a larger than normally-specified pipe, then the designer should consider the design feature of a new standpipe and hose, or the functional capability of a greater capacity (larger diameter) pipe.

The aircraft impact rule establishes two sets of acceptance criteria in paragraph (a)(1), each containing two sub-criteria:

(i) The reactor core remains cooled, or the containment remains intact; and

(ii) Spent fuel cooling or spent fuel pool integrity is maintained.

The acceptance criteria in both paragraphs (a)(1)(i) and (ii) must be met in order for the NRC to find that the requirements of the aircraft impact rule have been satisfied; it is not sufficient, for example, to satisfy the criterion of paragraph (a)(1)(i) but to fail the criterion of paragraph (a)(1)(ii).

Each criterion is expressed in the form of an alternative: within each criterion, only one of the sub-criteria needs to be satisfied in order to show compliance with the aircraft impact rule. The order of the sub-criteria does not reflect any requirement with respect to the logical order in which the NRC expects a designer to determine if each criterion is satisfied. For the first criterion in paragraph (a)(1)(i), the NRC prefers that designers identify design features and functional capabilities to demonstrate that, with reduced use of operator actions, the reactor core remains cooled. If core cooling can be maintained with the identified design features and functional capabilities (and with reduced use of operator action), then the designer need not identify and incorporate design features and functional capabilities to show that the containment remains intact. Otherwise, the designer must identify design features and functional capabilities that show that the containment remains intact. Likewise, a designer is afforded the flexibility under the aircraft impact rule of truncating the analysis and simply demonstrating that the containment remains intact.

For the second criterion in paragraph (a)(1)(ii), the NRC prefers that designers identify and incorporate design features and functional capabilities to demonstrate that, with reduced use of operator action, spent fuel pool integrity is maintained. If the applicant can show that spent fuel pool integrity can be maintained with the applicant's identified design features and functional capabilities, then no further consideration of design features and functional capabilities to maintain spent fuel cooling is necessary. However, if spent fuel pool integrity cannot be shown to be maintained, then spent fuel cooling must be maintained. Likewise, the aircraft impact rule affords the designer the flexibility of simply showing that spent fuel cooling can be maintained without first considering spent fuel pool integrity. The NRC reiterates, however, that the aircraft impact assessment must consider the effects of the aircraft impact on all four key safety functions—core cooling, containment, spent fuel cooling, and spent fuel pool integrity.

There are only two bases for either an NRC determination or an interested person's contention that the acceptance criteria in paragraph (a)(1) have not been met. One is that the analyses utilized by the designer in showing that the acceptance criteria have been met are not technically acceptable. The other basis is that the design features and functional capabilities overall do not involve any reduced use of operator actions. The NRC does not expect each design feature and functional capability incorporated into the design to involve reduced use of operator actions; the overall reduction in use of operator actions must be judged for the complete set of design features and functional capabilities relied upon in the assessment to show that both acceptance criteria in paragraph (a)(1)(i) and (ii) have been met. However, as discussed below, the NRC does not intend that the use of operator actions be reduced without consideration of countervailing considerations. In addition, the NRC does not intend to require consideration—much less inclusion in its design—of a design feature or functional capability that could have adverse safety or security consequences under a different operational or accident scenario.

The acceptance criteria in paragraph (a)(1) focus on the functions of core cooling capability, containment, spent fuel cooling capability, and spent fuel

pool integrity following the aircraft impact. These four functions are applicable to light water reactors (LWRs), and each may not be applicable to non-LWR reactor designs, or may have to be supplemented by other key functions. When reviewing non-LWR designs, the NRC will evaluate the applicability of the acceptance criteria set forth in the aircraft impact rule and the possible need for other criteria. If necessary, the NRC will issue exemptions and impose supplemental criteria to be used in the aircraft impact assessment for such non-LWR designs. The NRC believes this regulatory approach is preferable to excluding non-LWRs from the applicability of the aircraft rule, because such an exclusion could be interpreted in an erroneous manner as reflecting the NRC's belief that non-LWRs need not be designed against large, commercial aircraft impacts.

The design features and functional capabilities selected by the designer must show that the acceptance criteria in the aircraft impact rule can be met with ''reduced use of operator action.'' In this context, ''operator action'' includes actions of operators in the control room or at alternative control panels or control areas to control the reactor and the nuclear facility. This means that active operator intervention and initiation of responsive action to maintain core cooling or an intact containment, and spent fuel cooling or spent fuel pool integrity should be reduced. The designer need not strive to achieve the absolute minimum in operator action. The NRC recognizes that there may be countervailing considerations that weigh against reducing to the absolute minimum the use of operator action to show that the acceptance criteria in the aircraft impact rule are met. The NRC expects the designer to identify and consider in a reasonable process the goal of incorporating design features and functional capabilities which achieve the acceptance criteria in paragraph (a)(1)(i) and (ii) with reduced use of operator action.

Paragraph (a)(2) Aircraft Impact Characteristics

The assessment required by paragraph (a) of the aircraft impact rule must be based on the aircraft impact characteristics specified in paragraph (a)(2). The characteristics of the aircraft impact must be that of a large, commercial aircraft used for long distance flights in the United States, with aviation fuel loading typically used for such flights. The rule refers to long distance flights ''in the United States,'' which means those which originate and terminate in the United States (*i.e.,* domestic flights).

The NRC's guidance on the aircraft impact characteristics will be contained in guidance documents. The guidance will include the time-force curve, or loading function, that is derived from the aircraft impact characteristics for use in applicants' assessment of the aircraft impact. In the case of a combined license applicant that is required to perform an aircraft impact assessment, the applicant could take credit for site-specific topographic features (*e.g.,* mountains) and siting features (*e.g.,* the existence of non-plant structures) to limit the directions from which the plant could experience an impact.

Footnote 1 to paragraph (a)(2) states that changes to the detailed parameters on aircraft impact characteristics set forth in guidance shall be approved by the Commission. This footnote ensures that changes to the guidance on the aircraft characteristics will not be made without Commission consideration and approval.

Paragraph (a)(3) Applicability

As set forth in paragraph (a)(3), the assessment requirement for the aircraft impact rule applies to: (1) Construction permits under 10 CFR part 50 issued after July 13, 2009; (2) operating licenses for which the underlying construction permits were issued after July 13, 2009; (3) design certifications issued after July 13, 2009; (4) the four currently approved design certifications in 10 CFR part 52, appendices A through D at the time of renewal, but only if they have not been amended to comply with the aircraft impact rule by that time; (5) standard design approvals issued after July 13, 2009; (6) combined licenses issued under 10 CFR part 52 which either do not reference a standard design certification, standard design approval, or manufactured reactor, or reference one of the four currently approved design certifications if the referenced design has not been amended to comply with the aircraft impact rule; and (7) manufacturing licenses that do not reference a standard design approval or standard design certification meeting the requirements of this section.

Applicants for operating licenses under part 50 whose underlying construction permits were issued before the aircraft impact rule need not (but may voluntarily choose to) comply with the aircraft impact rule. The NRC notes that the applicability of the aircraft impact rule is dependent upon the date of the NRC's final action on an application, and not the date of filing of the application. Thus, a combined license issued after the effective date of the final 10 CFR 50.150 rule will be subject to the requirements of the rule, even if its application was filed before the effective date of the final 10 CFR 50.150 rule.

Combined licenses and manufacturing licenses which do not reference a standard design certification meeting the requirements of this rule are subject to the assessment requirement in paragraph (a)(1). However, combined license applicants that choose to reference a design for which a design certification application has been docketed but not granted need not perform the assessment required by paragraph (a), assuming that the combined license which is issued references a final design certification rule which complies with the aircraft impact rule. This is an acknowledgement that, under 10 CFR 52.55(c), an applicant for a combined license may, at its own risk, reference in its application a design for which a design certification application has been docketed but not granted.

Certain combined license applicants need not perform a plant-specific assessment to comply with the aircraft impact rule. If the combined license application references a design certification, design approval, or manufactured reactor which complies (or will comply, upon amendment of the design certification by the time of issuance of the combined license) with the assessment requirements of the aircraft impact rule, then the combined license applicant need not perform an assessment to comply with the aircraft impact rule. This means, as a practical matter, that the scope of the overall plant design which is subject to the aircraft impact rule's requirements may be greater for a ''custom'' combined license applicant who does not reference a design certification, design approval, or manufactured reactor which complies (or will comply) with the aircraft impact rule.

Analogous to the combined license applicant, a manufacturing license applicant who does not reference a standard design certification or standard design approval which has complied with the aircraft impact rule, must comply with the aircraft impact rule by performing the assessment required by 10 CFR 50.150(a). The scope of the assessment is limited to the scope of the design of the reactor to be approved for manufacture.

The four currently approved design certifications are not required to comply with the aircraft impact rule except upon renewal if the design certification

has not already been amended to comply with the aircraft impact rule. The original design certification applicant may, at any time, voluntarily request an amendment to the design certification rule to recertify the design certification as complying with the aircraft impact rule. The NRC notes that persons or entities other than the original design certification applicant may also request such an amendment of one of the four currently approved design certifications. However, such an application must provide the full set of information required by the aircraft impact rule, including, as necessary, information which substitutes for the proprietary and safeguards information provided in the original design certification proceeding, but which is not available for use in the design certification amendment proceeding. The amendment of the design certification to reflect compliance with the aircraft impact rule will be accomplished through rulemaking.

As a result of these provisions, every newly constructed nuclear power plant will meet the aircraft impact rule, which is the NRC's key objective in adopting this final aircraft impact rule.

Paragraph (b) Content of Application

Paragraph (b) requires the PSAR or FSAR for each license, certification, and regulatory approval application which is subject to 10 CFR 50.150(a) to include certain specified information related to compliance with the rule. This information consists of: (1) A description of the design features and functional capabilities which the applicant has selected (identified) for inclusion in the design to show that the facility can withstand the effects of the aircraft impact; and (2) a concise description of how the identified design features and functional capabilities meet the assessment requirements in 10 CFR 50.150(a)(1). The application should summarize the bases for the applicant's determination that the selected features and capabilities incorporated into the facility design show, with reduced use of operator actions, that the acceptance criteria in 10 CFR 50.150(a)(1) are met. The 10 CFR 50.150(b) information must be included in the PSAR or FSAR in accordance with 10 CFR 50.34(a)(13), 10 CFR 50.34(b)(12), 10 CFR 52.47(a)(28), 10 CFR 52.79(a)(47), 10 CFR 52.137(a)(26), or 10 CFR 52.157(f)(32) and should address only those features and capabilities selected by the applicant for inclusion in the plant design to address aircraft impacts.

The description of the features and capabilities should be equivalent in detail to descriptions of other design features and functional capabilities addressing beyond-design-basis events or severe accidents which are required to be described in the license, certification, or approval application.

Inclusion of any SGI in the information submitted in the FSAR as part of a relevant application must be in accordance with applicable requirements in 10 CFR part 73. The NRC will process and address requests for access to this information from the general public in accordance with the NRC's existing regulations and procedures.

The NRC reiterates that aircraft impact is not a design basis event. Therefore, the design and construction of features and capabilities designated by the designer as meeting the aircraft impact rule's requirements need not meet the ''special treatment'' requirements applicable to safety-related and important to safety structures, systems, and components.

Paragraph (c) Control of Changes

Paragraph (c) clarifies the requirements governing changes to information in the PSAR or FSAR which reflects the results of compliance with the aircraft impact rule for each of the licensing or certification processes subject to the aircraft impact rule. In the proposed aircraft impact rule, the provisions governing changes to such information were in proposed 10 CFR 52.502.

The PSAR or FSAR information required by the aircraft impact rule which is subject to the change control requirement in paragraph (c) are the descriptions of the design features and functional capabilities incorporated into the final design of the nuclear power facility and the description of how the identified design features and functional capabilities meet the assessment requirements in 10 CFR 50.150(a)(1). Not all of the actual change controls are presented in paragraph (c). Instead, most of the sections in paragraph (c) cite to an existing regulation presenting the FSAR change controls for that type of license or certification. Thus, in many cases, paragraph (c) is simply a ''pointer'' to the already-existing change controls. However, in all cases, the objective of the change controls remains the same: To determine whether the design of the facility, as changed or modified, is shown to withstand the effects of the aircraft impact with reduced use of operator actions. In other words, the applicant or licensee must continue to show, with the modified design, that the acceptance criteria in 10 CFR 50.150(a)(1) are met with reduced use of operator actions. The rule does not require an applicant or a licensee implementing a design change to redo the complete aircraft impact assessment to evaluate the effects of the change. The NRC believes it may be possible to demonstrate that a design change is bounded by the original design or that the change provides an equivalent level of protection, without redoing the original assessment.

Paragraph (c)(1) provides that, for construction permits which are subject to the aircraft impact rule, if the permit holder changes the information required by 10 CFR 50.34(a)(13) to be included in the PSAR, then the permit holder shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a) and amend the information required by 10 CFR 50.34(a)(13) to be included in PSAR to describe how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1).

Paragraph (c)(2) provides that, for operating licenses which are subject to the aircraft impact rule (*i.e.,* operating licenses for which the underlying construction permits are issued after July 13, 2009), if the licensee changes the information required by 10 CFR 50.34(b)(12) to be included in the FSAR, then the licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a) and amend the information required by 10 CFR 50.34(b)(12) to be included in the FSAR to describe how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1).

Paragraph (c)(3) provides that, for design certifications which are subject to the aircraft impact rule, generic changes to the information required by 10 CFR 52.47(a)(28) to be included in the FSAR are governed by the applicable requirements of 10 CFR 52.63. A design feature or functional capability described in a standard design certification may not be changed in the design certification except by notice and comment rulemaking (see 10 CFR 52.63(a)(1) and (2)), and such a change must meet one of the criteria in 10 CFR 52.63(a)(1). Any generic change to a design certification rule must be implemented by all referencing combined licenses, as required by 10 CFR 52.63(a)(3).

Paragraph (c)(4)(i) provides that, for combined licenses which are subject to 10 CFR 50.150(a) (*i.e.,* combined licenses that do not reference a design certification, design approval, or

manufactured reactor that complies with the rule), if the licensee changes the information required by 10 CFR 52.79(a)(47) to be included in the FSAR, then the licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150 and amend the information required by 10 CFR 52.79(a)(47) to be included in the FSAR to describe how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1). The NRC believes that, because this rule addresses a beyond-design-basis event, it is appropriate to apply the same standard that was applied during the original assessment of design features and functional capabilities to any licensee-proposed changes to such features and capabilities.

Paragraph (c)(4)(ii) provides that, for combined license applicants or holders which are not subject to 10 CFR 50.150(a), but reference a standard design certification which is subject to 10 CFR 50.150(a), proposed departures from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the referenced standard design certification are governed by the change control requirements in the applicable design certification rule. The NRC expects to add a new change control provision to future design certification rules subject to 10 CFR 50.150(a) (including amendments to any of the four existing design certifications) to govern combined license applicants and holders referencing the design certification that request a departure from the design features or functional capabilities in the referenced design certification. The new change control provision will require that, if the applicant or licensee changes the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the standard design certification, then the applicant or licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a). The applicant or licensee must also describe in a change to the FSAR (*i.e.,* a plant-specific departure from the generic design control document), how the modified design features and functional capabilities continue to meet the assessment requirements in 10 CFR 50.150(a)(1).

Paragraph (c)(4)(iii) provides that, for combined license applicants or holders which are not subject to 10 CFR 50.150(a) but reference a manufactured reactor which is subject to 10 CFR 50.150(a), proposed departures from the information required by 10 CFR 52.157(f)(32) to be included in the FSAR for the manufacturing license are governed by the applicable requirements in 10 CFR 52.171(b)(2). Paragraph (b)(2) of 10 CFR 52.171 allows an applicant or licensee who references or uses a nuclear power reactor manufactured under a manufacturing license under this subpart to request a departure from the design characteristics, site parameters, terms and conditions, or approved design of the manufactured reactor. The Commission may grant a request only if it determines that the departure will comply with the requirements of 10 CFR 52.7 and that the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the departure.

Paragraph (c)(5)(i) provides that, for manufacturing licenses which are subject to 10 CFR 50.150(a), generic changes to the information required by 10 CFR 52.157(f)(32) to be included in the FSAR are governed by the applicable requirements of 10 CFR 52.171. Paragraph (b)(1) of 10 CFR 52.171 does not allow the holder of a manufacturing license to make changes to the design of the nuclear power reactor authorized to be manufactured without prior Commission approval. Any request for a change to the design must be in the form of an application for a license amendment, and must meet the requirements of 10 CFR 50.90 and 10 CFR 50.92.

Paragraph (c)(5)(ii) provides that, for manufacturing license applicants or holders which are subject to 10 CFR 50.150(a), proposed departures from the information required by 10 CFR 52.47(a)(28) to be included in the FSAR for the referenced standard design certification are governed by the change control requirements in the applicable design certification rule.

Section 52.47 Contents of Applications; Technical Information

Section 52.47 identifies the required technical information to be included in an application for a standard design certification. The final rule revises this section by adding a new paragraph (a)(28) requiring that the FSAR contain the information required by 10 CFR 50.150, ''Aircraft impact assessment.'' This information, as contained in paragraph (b) of 10 CFR 50.150, is:

1. A description of the design features and functional capabilities identified in 10 CFR 50.150(a)(1); and

2. A description of how such design features and functional capabilities meet the assessment requirements in 10 CFR 50.150(a)(1).

The 10 CFR 52.47(a)(28) requirement applies only to those standard design certification applications which are subject to 10 CFR 50.150, that is, those design certifications issued after the effective date of the final rule (see 10 CFR 50.150(a)). Thus, any standard design certification application that is docketed and under review by the NRC but has not yet been issued in final form as of the effective date of 10 CFR 50.150 must amend its application to include the information required by 10 CFR 50.150.

Section 52.59 Criteria for Renewal

Section 52.59 establishes the criteria which must be met in order for the NRC to renew a standard design certification. The final rule revises paragraph (a) by adding a requirement that the Commission shall, the first time one of the four existing design certifications is to be renewed, find that the renewed design complies with the applicable requirements of the aircraft impact rule if the design certification has not already been amended to comply with the aircraft impact rule. This finding would be in addition to the (implicit) findings which the Commission must make under paragraph (a). The findings need only be made the first time the design certification is renewed. Once the design certification has been amended or renewed to reflect compliance with the aircraft impact rule, there is no need for the NRC to remake the finding of compliance with the aircraft impact rule nor does the design or the assessment have to be upgraded for purposes of aircraft impact rule compliance in any subsequent amendment or renewal.

Section 52.79 Contents of Applications; Technical Information in Final Safety Analysis Report

Section 52.79 identifies the required technical information to be included in an FSAR submitted in a combined license application under 10 CFR part 52, subpart C, Combined Licenses. The final rule revises this section by adding a new paragraph (a)(47) requiring that the FSAR contain the information required by 10 CFR 50.150. This is the same type of information that an applicant for a standard design certification will need to submit, namely, the following:

1. A description of the design features and functional capabilities identified in 10 CFR 50.150(a)(1); and

2. A description of how such design features and functional capabilities meet the assessment requirements in 10 CFR 50.150(a)(1).

Only those combined licenses issued after the effective date of the final rule that do not reference a standard design certification, standard design approval, or manufactured reactor, or that reference a standard design certification issued before the effective date of the final rule which has not been amended to address the requirements of 10 CFR 50.150, are subject to 10 CFR 52.79(a)(47). Thus, a combined license application filed after the effective date of 10 CFR 50.150 and referencing a standard design certification, standard design approval, or manufactured reactor subject to the proposed rule, or referencing one of the four current standard design certifications (ABWR, System 80+, AP600, and AP1000) which has been amended to address the requirements of 10 CFR 50.150 will not have to separately include the information required by 10 CFR 50.150 because it will be incorporated by reference to the standard design or manufactured reactor. This is consistent with the requirements of 10 CFR 52.79(c), (d), and (e) which state that, if the combined license application references a standard design certification, standard design approval, or manufactured reactor, then the FSAR need not contain information or analyses submitted to the Commission in connection with the design certification, design approval, or manufacturing license, as applicable. By contrast, a combined license applicant not referencing a standard design certification, standard design approval, or manufactured reactor whose application is docketed and under review by the NRC but for which a license has not yet been issued as of the effective date of 10 CFR 50.150, must amend its application to include the information required by 10 CFR 50.150.

Section 52.137 Contents of Applications; Technical Information

Section 52.137 identifies the required technical information to be included in an application for a standard design approval. The final rule revises this section by adding a new paragraph (a)(26) requiring that the FSAR contain the information required by 10 CFR 50.150. This information, as currently presented in paragraph (b) of 10 CFR 50.150 is:

1. A description of the design features and functional capabilities identified in 10 CFR 50.150(a)(1); and

2. A description of how such design features and functional capabilities meet the assessment requirements in 10 CFR 50.150(a)(1).

The 10 CFR 52.137(a)(26) requirement applies only to those standard design approval applications which are subject to 10 CFR 50.150, that is, those design approvals issued after the effective date of the final rule (see 10 CFR 50.150(a)). Thus, any standard design approval application that is docketed and under review by the NRC but has not yet been issued in final form as of the effective date of 10 CFR 50.150 must amend its application to include the information required by final 10 CFR 50.150.

Section 52.157 Contents of Applications; Technical Information in Final Safety Analysis Report

Section 52.157 identifies the required technical information to be included in an application for a manufacturing license. The final rule revises this section by adding a new paragraph (f)(32) requiring that the FSAR contain the information required by 10 CFR 50.150. This information, as currently presented in paragraph (b) of 10 CFR 50.150, is limited to the following:

1. A description of the design features and functional capabilities identified in 10 CFR 50.150(a)(1); and

2. A description of how such design features and functional capabilities meet the assessment requirements in 10 CFR 50.150(a)(1).

The 10 CFR 52.157(f)(32) requirement applies only to those manufacturing license applications which are subject to 10 CFR 50.150(a)(1), that is, those manufacturing licenses that do not reference a design certification or design approval complying with 10 CFR 50.150. Thus, any manufacturing license application that is docketed and under review by the NRC but has not yet been issued in final form as of the effective date of 10 CFR 50.150 must amend its application to include the information required by 10 CFR 50.150.

VIII. Guidance

The NRC staff expects to issue new regulatory guidance on the requirements in 10 CFR 50.150 that will endorse guidance being prepared by NEI. This guidance is intended to provide an acceptable method by which relevant applicants can perform the assessment of aircraft impacts to meet the requirements of 10 CFR 50.150. The final rule requires that the design-specific impact assessment use the aircraft impact characteristics specified in the rule. A more detailed description of the aircraft impact parameters that are considered appropriate for use in the assessment will be presented in the NRC's regulatory guidance. Any future changes to the detailed parameters on aircraft impact characteristics set forth in the guidance will be approved by the Commission. Because the portion of this regulatory guidance describing the detailed aircraft impact characteristics is likely to contain SGI, that portion of the document will only be made available to those individuals with a need-to-know, and who are otherwise qualified to have access to SGI. A version of the document without the SGI will be made publicly available. Publication of the draft regulatory guidance is planned to coincide with publication of the final rule.

IX. Availability of Documents

The NRC is making the following documents available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC PDR is located at 11555 Rockville Pike, Public File Area O1 F21, Rockville, Maryland 20852, e-mail *pdr.resource@nrc.gov.*

Regulations.gov (Web). These documents may be viewed and downloaded electronically through the Federal e-Rulemaking Portal *http://www.regulations.gov,* Docket number NRC–2007–0009.

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

Document	PDR	Web	ERR (ADAMS)
SECY–06–0204, ''Proposed Rulemaking—Security Assessment Requirements for New Nuclear Power Reactor Designs (RIN 3150–AH92)'' (September 28, 2006).	X	X	ML062300068
Staff Requirements Memorandum for SECY–06–0204 (April 24, 2007)	X	X	ML071140119
Regulatory History Index for the October 3, 2007 proposed rule	X	X	ML073511644
Federal Register Notice	X	X	ML090220527
Environmental Assessment	X	X	ML090610123
Response to Public Comments	X	X	ML090610124
SECY–08–0152, ''Final Rule—Consideration of Aircraft Impacts for New Nuclear Power Reactors (RIN 3150–AI19)'' (October 15, 2008).	X	X	ML082670873

Document	PDR	Web	ERR (ADAMS)
Staff Requirements Memorandum for SECY–08–0152 (February 17, 2009)	X	X	ML090480610

X. Agreement State Compatibility

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

XI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC is amending its regulations to require applicants for new nuclear power reactors to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft. The applicant is required to use realistic analyses to identify and incorporate design features and functional capabilities to show, with reduced use of operator actions, that either the reactor core remains cooled or the containment remains intact, and either spent fuel cooling or spent fuel pool integrity is maintained. These requirements apply to applicants for new construction permits; new operating licenses that reference a new construction permit; new standard design certifications, renewal of any of the four existing design certifications if the design has not previously been amended to comply with the final rule; new standard design approvals; manufacturing licenses that do not reference a standard design certification or standard design approval, or that reference a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule; and combined licenses that do not reference a standard design certification, standard design approval, or manufactured reactor, or that reference a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule. In addition, these amendments contain requirements for control of changes to any design features or functional capabilities credited for showing that the facility can withstand the effects of an aircraft impact. This regulatory action does not establish standards with which all applicants must comply. For these reasons, the Commission concludes that this action does not constitute the establishment of a standard that contains generally applicable requirements.

XII. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A to 10 CFR part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement (EIS) is not required. As presented in the final environmental assessment, this action will not have a significant environmental impact because it applies only to applicants for new nuclear power reactors and requires them to use realistic analyses to identify and incorporate design features and functional capabilities to show, with reduced use of operator actions, that either the reactor core remains cooled or the containment remains intact, and either spent fuel cooling or spent fuel pool integrity is maintained, and because the standards and requirements applicable to radiological releases and effluents are not affected by this rulemaking.

The NRC requested public comments on any aspect of the environmental assessment. Three public comments were received that discussed the need for the preparation of an EIS for the aircraft impact rulemaking. The NRC responded that because the adoption of this rule does not constitute a major Federal action significantly affecting the environment, an EIS was not prepared for this rulemaking. The NRC also requested the views of the States on the environmental assessment for this rule. No State comments were received. Availability of the final environmental assessment is provided in Section IX of this document.

XIII. Paperwork Reduction Act Statement

The final rule contains new or amended information collection requirements contained in 10 CFR parts 50 and 52 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0011 and 3150–0151.

The burden to the public for these information collections is estimated to average 2,186.7 hours per response. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.Resource@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

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

XIV. Regulatory Analysis

The NRC has prepared a regulatory analysis on this final rule and has included it in this **Federal Register** document. The analysis examines the costs and benefits of the alternatives considered by the NRC. No public comments were received on the proposed regulatory analysis.

1. Statement of the Problem and Objective

This final rule amends 10 CFR part 50 and 10 CFR part 52 to require applicants for new nuclear power reactors to

perform a design-specific assessment of the effects of the impact of a large, commercial aircraft. The applicant is required to use realistic analyses to identify and incorporate design features and functional capabilities to show, with reduced use of operator actions, that either the reactor core remains cooled or the containment remains intact, and either spent fuel cooling or spent fuel pool integrity is maintained. These requirements apply to applicants for new construction permits; new operating licenses that reference a new construction permit; new standard design certifications; renewal of any of the four existing design certifications if the design has not previously been amended to comply with the final rule; new standard design approvals; manufacturing licenses that do not reference a standard design certification or standard design approval, or that reference a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule; and combined licenses that don't reference a standard design certification, standard design approval, or manufactured reactor, or that reference a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule. In addition, these amendments contain requirements for control of changes to any design features or functional capabilities credited for showing that the facility can withstand the effects of an aircraft impact. The objective of this rule is to require nuclear power plant designers to perform a rigorous assessment of the design to identify design features and functional capabilities that could provide additional inherent protection to show, with reduced use of operator actions, that either the reactor core remains cooled or the containment remains intact, and either spent fuel cooling or spent fuel pool integrity is maintained.

2. Identification of Regulatory Alternatives

The only alternative considered was to conduct a rulemaking to require applicants to perform an aircraft impact assessment on new nuclear power reactors because the Commission directed the NRC staff in a staff requirements memorandum dated April 24, 2007, to revise the regulations. However, the NRC considers the no-action alternative as the baseline from which to measure the costs and benefits of the final rule.

The regulations in 10 CFR part 50 and 10 CFR part 52 are being amended for applicants for new nuclear power reactors to require these applicants to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft. Applicants for new nuclear power reactors are required to use realistic analyses to identify and incorporate design features and functional capabilities to show, with reduced use of operator actions, that either the reactor core remains cooled or the containment remains intact, and either spent fuel cooling or spent fuel pool integrity is maintained. This rule should result in new nuclear power reactor facilities being more inherently robust with regard to an aircraft impact than if they were designed in the absence of this final rule.

3. Analysis of Values and Impacts of Final Rulemaking

3.1 Identification of Affected Attributes

The NRC identified the attributes that the regulatory action could affect by using the list of potential attributes provided in Chapter 5 of NUREG/BR–0184, ''Regulatory Analysis Technical Evaluation Handbook,'' issued January 1997. Affected attributes include the following:

Public Health (Accident). The regulatory action will reduce the risk that public health will be affected by the release of radioactive materials to the environment from the impact of a large, commercial aircraft on a nuclear power plant.

Occupational Health (Accident). The regulatory action will reduce the risk that occupational health will be affected by the release of radioactive materials to the environment from the impact of a large, commercial aircraft on a nuclear power plant.

Offsite Property. The regulatory action will reduce the risk that offsite property will be affected by the release of radioactive materials to the environment from the impact of a large, commercial aircraft on a nuclear power plant.

Onsite Property. The regulatory action will reduce the risk that onsite property will be affected by the release of radioactive materials to the environment from the impact of a large, commercial aircraft on a nuclear power plant.

Industry Implementation. The regulatory action will require applicants for new nuclear power reactors to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft. Applicants for new nuclear power reactors are required to use realistic analyses to identify and incorporate design features and functional capabilities to show, with reduced use of operator actions, that either the reactor core remains cooled or the containment remains intact, and either spent fuel cooling or spent fuel pool integrity is maintained. Applicants will incur costs to develop an SGI program, perform the assessment, and incorporate the results into the design.

Industry Operation. The regulatory action will require applicants and licensees for new nuclear power reactors to retain the aircraft impact assessment throughout the pendency of the application and for the term of the certification or license (including any period of renewal). Applicants and licensees will incur costs to retain the assessment and supporting documentation.

NRC Implementation. Under the regulatory action, the NRC will incur costs to develop guidance on performing an aircraft impact assessment and to review the actions taken by the applicant to comply with the aircraft impact rule.

Improvements in Knowledge. The regulatory action will improve knowledge with regard to an aircraft impact by ensuring that nuclear power plant designers perform a rigorous assessment of the design to identify design features and functional capabilities that could provide additional inherent protection to withstand the effects of an aircraft impact.

Safeguards and Security Considerations. The regulatory action to address the capability of new nuclear power reactors relative to an aircraft impact is based both on enhanced public health and safety and enhanced common defense and security, but is not necessary for adequate protection. Rather, this rule's goal is to enhance the facility's inherent robustness at the design stage.

3.2 Methodology

This section describes the process used to evaluate benefits and costs associated with the regulatory action. The benefits (values) come from any desirable changes in the affected attributes which are solely qualitative for the regulatory action; the costs (impacts or burdens) come from any undesirable changes in the affected attributes (*e.g.,* monetary costs, increased exposures). As described in Section 3.1 of this regulatory analysis, the attributes expected to be affected include public health (accident), occupational health (accident), offsite property, onsite property, industry implementation, industry operation, NRC implementation, improvements in knowledge, and safeguards and security considerations.

When possible, a cost-benefit analysis quantifies the overall costs and benefits of the regulatory options relative to each of these attributes. This analysis relies on a qualitative evaluation of several of the affected attributes (public health, occupational health, offsite property, onsite property, improvements in knowledge, and safeguards and security considerations) because of the difficulty in quantifying the impact of this rulemaking. The regulatory action will affect these attributes through the associated reduction in the risks of aircraft impact damage to the plant resulting in the inability to maintain either reactor core cooling or an intact containment, and either spent fuel cooling or spent fuel pool integrity.

The remaining attributes (industry implementation, industry operation, and NRC implementation) are evaluated quantitatively. Quantitative analysis requires a characterization of the universe, including factors such as the number of applicants and the scope of the aircraft impact assessment being performed. The NRC analyzed incremental costs and benefits of the regulatory action relative to the baseline (*i.e.,* the no-action alternative described in Section 2 of this regulatory analysis).

Under OMB guidance and NUREG/BR–0058, Revision 4, ''Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission,'' issued September 2004, the results of the cost analysis are presented as discounted flows of funds using 3- and 7-percent real discount rates.

3.3 Data

The NRC derived information from industry announcements on the estimated number of applications submitted for a new standard design certification, renewal of an existing design certification, and a combined license that references a currently approved standard design certification. Data used was obtained during September 2008. The NRC staff applied its professional judgment in this analysis given the uncertainty in the number of applications for a new construction permit; new operating license; new standard design approval; manufacturing license that does not reference a standard design certification or standard design approval, or that references a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule; and combined license that does not reference a standard design certification, standard design approval, or manufactured reactor, or that references a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule.

3.4 Assumptions

The regulatory action will apply only to applicants for new construction permits; new operating licenses that reference a new construction permit; new standard design certifications, renewal of any of the four existing design certifications if the design has not previously been amended to comply with the final rule; new standard design approvals; manufacturing licenses that don't reference a standard design certification or standard design approval, or that reference a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule; and combined licenses that don't reference a standard design certification, standard design approval, or manufactured reactor, or that reference a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule. It will not apply to a construction permit, operating license, standard design approval, or standard design certification (except at renewal) issued before the effective date of the final rule.

3.5 Analysis

For Sections 3.5.1 through 3.5.10, the cost-benefit analysis of the regulatory action is based on the assumed number of applicants in each category. In each case, industry will incur both implementation and operation costs. Furthermore, because all of the benefits are measured qualitatively in this analysis, only costs are included in these subsections.

This analysis uses $100 and $105 per hour for NRC and industry staff rates, respectively. In the analysis done for the proposed rule, an NRC hourly staff rate of $105 was used. This value was recently revised to account for the changing composition of the NRC staff and re-baselining of estimates of hours for training, annual leave, etc. In addition, the NRC has reassessed the cost to purchase an appropriate SGI container and lock. This analysis uses $1,200, rather than the $2,500 used for the proposed rule analysis.

The annual results are derived as present values using the 3- and 7-percent discount rates as described in Appendix B to NUREG/BR–0184.

3.5.1 Construction Permit Applications

Under the regulatory action, an applicant for a new construction permit will need to comply with the requirements for an aircraft impact assessment in 10 CFR 50.150. However, the NRC staff concludes that it is unlikely that a request for a new construction permit will be submitted to the NRC for approval during the next 20 years. Therefore, no cost-benefit analysis is needed for a construction permit.

3.5.2 Operating License Applications

Under the regulatory action, an applicant for a new operating license will need to comply with the requirements for an aircraft impact assessment in 10 CFR 50.150. However, the NRC staff concludes that it is unlikely that a request for a new operating license will be submitted to the NRC for approval during the next 20 years. Therefore, no cost-benefit analysis is needed for an operating license.

3.5.3 Standard Design Certification Applications

In implementing the regulatory action, standard design certification applicants will incur one-time costs to develop an SGI program; purchase an appropriate SGI storage container and lock; perform the aircraft impact assessment; and identify and incorporate into the design those design features and functional capabilities that show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact. The NRC estimates that each applicant will spend 120 hours to develop the SGI program. Using the assumed staff rate of $105 per hour, the one-time cost of developing the SGI program will be $13,000 per applicant (120 hours × $105/hour). The NRC also estimates it will cost $1,200 to purchase an appropriate SGI storage container and lock. Finally, the NRC estimates it will take an applicant 24 staff-months for a one-time cost of $400,000 (24 staff-months × 4 weeks/month × 40 hours/week × $105/hour) per application to complete the assessment and incorporate the results into the design. Thus, the one-time cost for an applicant to implement the regulatory action is estimated to be $415,000.

For the standard design certification process, this analysis assumes that three applications will be affected by the final rule in the year that the rule is promulgated (*i.e.,* year 0), and thereafter, one application will be submitted every 4 years at years 4, 8, 12, 16, and 20. Table 1 shows the discounted flow of funds (using 3- and 7-percent discount rates) of the total industry implementation costs for

standard design certification applications over a 20-year period.

With respect to industry operational costs, there will be recordkeeping costs for retention of the assessment and supporting documentation. The NRC will require standard design certification applicants to retain these records throughout the pendency of the application and for the term of the certification (including any period of renewal). For this analysis, it is assumed that it takes 4 years for the Commission to adopt the application as a final standard design certification rule, after which the records are retained by the applicant for 15 years as required by the standard design certification rule. No renewal of the standard design certification rule is considered for this analysis. Thus, the records are retained for a total of 19 years. In addition, it is assumed that an applicant spends 3 hours per year to maintain the records. The estimated annual cost for recordkeeping is $315 per applicant (3 hours × $105/hour). Table 2 shows the discounted flow of funds of the recordkeeping costs (using 3- and 7-percent discount rates) for applications submitted over a 20-year period, using the schedule discussed previously.

After a standard design certification is adopted by the NRC, any change to a design feature or functional capability credited for complying with the aircraft impact rule will require that the applicant or licensee consider the effect of the changed feature or capability on the original assessment. The applicant or licensee must amend the information included in the FSAR to describe how the modified design feature or functional capability continues to meet the assessment requirements in the aircraft impact rule. However, the NRC staff concludes that after a standard design certification is adopted, it is unlikely that any changes will be made to design features or functional capabilities credited for complying with the aircraft impact rule. Therefore, no industry cost analysis is needed for this portion of the regulatory action.

Under the final rule, any combined license applicant referencing a design certification that complies with the requirements of this final rule will not have to perform an aircraft impact assessment.

TABLE 1—SUMMARY OF INDUSTRY IMPLEMENTATION COSTS FOR STANDARD DESIGN CERTIFICATION APPLICANTS

Year	Number of standard design certification applications	Implementation costs	
		Using 7-percent discount rate ($1,000)	Using 3-percent discount rate ($1,000)
0	3	1,200	1,200
4	1	320	370
8	1	240	330
12	1	180	290
16	1	140	260
20	1	110	230
Total	8	2,190	2,680

TABLE 2—SUMMARY OF INDUSTRY OPERATING COSTS FOR STANDARD DESIGN CERTIFICATION APPLICANTS

Year*	Number of standard design certification applications	Operating costs	
		Using 7-percent discount rate ($1,000)	Using 3-percent discount rate ($1,000)
0	3	9.8	14
4	1	2.5	4
8	1	1.9	3.6
12	1	1.4	3.2
16	1	1.1	2.8
20	1	0.84	2.5
Total	8	17.54	30.1

*Analysis assumes that it takes 4 years for the Commission to adopt the application as a final standard design certification rule, after which the records are retained by the applicant for 15 years.

3.5.4 Applications for Renewal of Any of the Four Existing Design Certifications if the Design Has Not Previously Been Amended To Comply With the Final Rule

Under the regulatory action, an applicant for renewal of any of the four existing design certifications which has not previously been amended to comply with the final aircraft impact rule will need to comply with the requirements of an aircraft assessment in 10 CFR 50.150. The NRC is expecting one application for renewal of one of the four existing design certifications that will be required to comply with the final rule to be submitted in the year after the rule is promulgated (*i.e.,* year 1).

This analysis assumes that the applicant for renewal has an existing SGI program and an appropriate SGI storage container and lock; resulting in no related costs to implement the regulatory action. However, in implementing the regulatory action, the applicant will incur one-time costs to perform the aircraft impact assessment and identify and incorporate into the design those design features and functional capabilities to show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact. The NRC estimates it will take this applicant 24 staff-months for a one-time cost of $400,000 (24 staff-months × 4 weeks/month × 40 hours/week × $105/hour) to complete the assessment and incorporate the results

into the design. No other costs associated with the application are considered for this analysis (*i.e.,* overall costs to do the administrative work to prepare and submit other portions of the application). Thus the one-time cost for this applicant to implement the regulatory action is estimated to be $400,000. For one application submitted in the year after the rule is promulgated, the discounted flow of funds of the implementation costs are $390,000 and $370,000 using 3- and 7-percent discount rates respectively.

With respect to industry operational costs, there will be recordkeeping costs for retention of the assessment and supporting documentation. The NRC will require applicants for renewal of an existing design certification to retain these records throughout the pendency of the application and for the term of the certification. For this analysis, it is assumed that it takes 3 years for the Commission to adopt the application for renewal as a final design certification rule, after which the records are retained by the applicant for 15 years as will be required by the standard design certification rule. No subsequent renewal of the standard design certification rule is considered for this analysis. Thus, the records are retained for a total of 18 years. In addition, it is assumed that an applicant spends 3 hours per year to maintain the records. The estimated annual cost for recordkeeping is $315 per applicant (3 hours × $105/hour). Thus, the discounted flow of funds of the recordkeeping costs for one application is $4,200 and $3,000 using 3- and 7-percent discount rates respectively.

After a renewal of an existing design certification is adopted by the NRC, any change to a design feature or functional capability credited for complying with the aircraft impact rule will require that the applicant or licensee consider the effect of the changed feature or capability on the original assessment. The applicant must describe how the modified design feature or functional capability continues to meet the assessment requirements in the aircraft impact rule. However, the NRC staff concludes that after the renewal is adopted, it is unlikely that any changes will be made to design features or functional capabilities credited for complying with the aircraft impact rule. Therefore, no industry cost analysis is needed for this portion of the regulatory action.

The total industry cost is the sum of the implementation and operation costs. The implementation cost is the present value of the assumed one application ($400,000) which when discounted is $390,000 (using a 3-percent discount rate) and $370,000 (using a 7-percent discount rate). The operating costs are $4,200 and $3,000 using the 3- and 7-percent discount rates as shown above. Therefore, the total discounted industry costs are $394,200 and $373,200 using 3- and 7-percent discount rates, respectively.

3.5.5 Standard Design Approval Applications

Under the regulatory action, an applicant for a new standard design approval will need to comply with the requirements for an aircraft impact assessment in 10 CFR 50.150. However, the NRC staff concludes that it is unlikely that a request for a new standard design will be submitted to the NRC for approval during the next 20 years. Therefore, no cost-benefit analysis is needed for a standard design approval.

3.5.6 Combined License Applications Not Referencing a Standard Design Certification, Standard Design Approval, or Manufactured Reactor

Although the NRC concludes that there is a low probability of a combined license applicant not referencing a standard design certification, standard design approval, or manufactured reactor, this analysis assumes that one application will be submitted to the NRC in year 10 following promulgation of the rule.

In implementing the regulatory action, combined license applicants will incur one-time costs to develop an SGI program; purchase an appropriate SGI storage container and lock; perform the aircraft impact assessment; and identify and incorporate into the design those design features and functional capabilities to show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact. The NRC estimates that each applicant will spend 120 hours to develop the SGI program. Assuming a staff rate of $105 per hour, the one-time cost of developing the SGI program will be $13,000 per applicant (120 hours × $105/hour). The NRC also estimates it will cost $1,200 to purchase an appropriate SGI storage container and lock. Finally, the NRC estimates it will take an applicant 24 staff-months for a one-time cost of $400,000 (24 staff-months × 4 weeks/month × 40 hours/week × $105/hour) per application to complete the assessment and incorporate the results into the design. Thus, the one-time cost for an applicant to implement the regulatory action is estimated to be $415,000. For one application submitted in year 10, following promulgation of the rule, the discounted flow of funds of the implementation costs are $310,000 and $210,000 using 3- and 7-percent discount rates, respectively.

With respect to industry operational costs, there will be recordkeeping costs for retention of the assessment and supporting documentation. The NRC will require that these records be retained throughout the pendency of the application and for the term of the license (including any period of renewal). For this analysis, it is assumed that it takes 4 years for the Commission to approve the application, after which the records are retained by the licensee for 60 years (initial 40-year license period plus a 20-year renewal period), at which time the Commission terminates the facility license. The records are retained for a total of 64 years. In addition, it is assumed that an applicant spends 3 hours per year to maintain the records. The estimated annual cost for recordkeeping is $315 per applicant (3 hours × $105/hour). Thus, the discounted flow of funds of the recordkeeping costs for one application is $6,000 and $2,200 using 3- and 7-percent discount rates, respectively.

After a combined license application is approved by the NRC, any change to a design feature or functional capability credited for complying with the aircraft impact rule will require that the licensee consider the effect of the changed feature or capability on the original assessment. The applicant must describe how the modified design feature or functional capability continues to meet the assessment requirements in the aircraft impact rule. However, the NRC staff concludes that after a combined license is issued, it is unlikely that a licensee will make any changes to design features or functional capabilities credited at the application stage. Therefore, no industry cost analysis is needed for this portion of the regulatory action.

The total industry cost is the sum of the implementation and operation costs. The implementation cost is the present value of the assumed one application ($415,000) which when discounted is $310,000 (using a 3-percent discount rate) and $210,000 (using a 7-percent discount rate). The operating costs are $6,000 and $2,200 using the 3- and 7-percent discount rates as shown above. Therefore, the total discounted industry costs are $316,000 and $212,200 using 3- and 7-percent discount rates, respectively.

3.5.7 Combined License Applications Referencing a Standard Design Certification Issued Before the Effective Date of the Rule Which Has Not Been Amended To Comply With the Rule

Under the regulatory action, an applicant for a combined license that references one of the four currently approved design certifications must comply with the rule. At present, the NRC is aware of only two of the currently approved designs that are planned to be referenced in combined license applications. For one of these certified designs, the AP1000, the original applicant has voluntarily submitted to the NRC an amendment that it believes will comply with the requirements of the aircraft impact rule. If the NRC approves the amendment as meeting the aircraft impact rule, then any combined license applicants referencing the recertified design will not be required to perform an aircraft impact assessment. Furthermore, this analysis assumes that after the combined license application is approved, the licensee makes no changes to a design feature or functional capability credited by the design certification for complying with the aircraft impact rule. Therefore, no cost-benefit analysis is needed for combined license applications that reference the recertified AP1000 design.

Regarding the other currently approved design certification that is being referenced in at least one combined license application, the NRC is not aware of any plans by the original applicant to submit an application to amend the certification to comply with the requirements of the aircraft impact rule, prior to the renewal of the certification. The NRC has received one combined license application referencing this certified design, and it is expected that this final rule will be effective before the NRC makes a decision on the combined license application. Therefore, the combined license applicant will be required to amend their application to comply with the requirements of the aircraft impact rule if the referenced design certification is not amended to comply with the rule during the pendency of the combined license application.

In implementing the regulatory action, the NRC is assuming that the combined license applicant will submit an amendment to their application to comply with the aircraft impact rule. In doing so, this combined license applicant will incur one-time costs to develop an SGI program; purchase an appropriate SGI storage container and lock; perform the aircraft impact assessment; and identify and incorporate into the design those design features and functional capabilities to show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact. The NRC estimates that this applicant will spend 120 hours to develop the SGI program. Assuming a staff rate of $105 per hour, the one-time cost of developing the SGI program will be $13,000 (120 hours × $105/hour). The NRC also estimates it will cost $1,200 to purchase an appropriate SGI storage container and lock. Finally, the NRC estimates it will take this applicant 24 staff-months for a one-time cost of $400,000 (24 staff-months × 4 weeks/month × 40 hours/week × $105/hour) to complete the assessment and incorporate the results into the design. Thus, the one-time cost for this applicant to implement the regulatory action is estimated to be $415,000. This analysis assumes that the application will be affected by the final rule in the year that the rule is promulgated (*i.e.,* year 0), and therefore, the discounted flow of funds of the implementation costs is $415,000 using either 3- or 7-percent discount rates.

With respect to industry operational costs, there will be recordkeeping costs for retention of the assessment and supporting documentation. The NRC will require that these records be retained throughout the pendency of the application and for the term of the license (including any period of renewal). For this analysis, it is assumed that it takes 4 years for the Commission to approve the application, after which the records are retained by the licensee for 60 years (initial 40-year license period plus a 20-year renewal period), at which time the Commission terminates the facility license. The records are retained for a total of 64 years. In addition, it is assumed that an applicant spends 3 hours per year to maintain the records. The estimated annual cost for recordkeeping is $315 per applicant (3 hours × $105/hour). Thus, the discounted flow of funds of the recordkeeping costs for one application is $8,100 and $4,300 using 3- and 7-percent discount rates, respectively.

After a combined license application is approved by the NRC, any change to a design feature or functional capability credited for complying with the aircraft impact rule will require that the licensee consider the effect of the changed feature or capability on the original assessment. The applicant must describe how the modified design feature or functional capability continues to meet the assessment requirements in the aircraft impact rule. However, the NRC concludes that after a combined license is approved, it is unlikely that a licensee will make any changes to design features or functional capabilities credited in the design at the application stage. Therefore, no industry cost analysis is needed for this portion of the regulatory action.

The total industry cost is the sum of the implementation and operation costs. The implementation cost is the present value of the assumed one application ($415,000) which when discounted is $415,000 (using either 3-or 7-percent discount rates). The operating costs are $8,100 and $4,300 using the 3- and 7-percent discount rates as shown above. Therefore, the total discounted industry costs are $423,100 and $419,300 using 3- and 7-percent discount rates, respectively.

3.5.8 Manufacturing License Applications Not Referencing a Standard Design Certification or Standard Design Approval

Although the NRC concludes that there is a low probability of a manufacturing license application not referencing a standard design certification or standard design approval, this analysis assumes that one application will be submitted to the NRC in year 10 following promulgation of the rule.

In implementing the regulatory action, manufacturing license applicants will incur one-time costs to develop an SGI program; purchase an appropriate SGI storage container and lock; perform the aircraft impact assessment; and identify and incorporate into the design those design features and functional capabilities to show, with reduced use of operator action, that the facility can withstand the effects of an aircraft impact. The NRC estimates that each applicant will spend 120 hours to develop the SGI program. Assuming a staff rate of $105 per hour, the one-time cost of developing the SGI program will be $13,000 per applicant (120 hours × $105/hour). The NRC also estimates it will cost $1,200 to purchase an appropriate SGI storage container and lock. Finally, the NRC estimates it will take an applicant 24 staff-months for a one-time cost of $400,000 (24 staff-months × 4 weeks/month × 40 hours/week × $105/hour) per application to complete the assessment and incorporate the results into the design. Thus, the one-time cost for an applicant to implement the regulatory action is estimated to be $415,000. For one application submitted in year 10, following promulgation of the rule, the discounted flow of funds of the implementation costs are $310,000 and

$210,000 using 3- and 7-percent discount rates, respectively.

With respect to industry operational costs, there will be recordkeeping costs for retention of the assessment and supporting documentation. The NRC will require that these records be retained throughout the pendency of the application and for the term of the license (including any period of renewal). For this analysis, it is assumed that it takes 4 years for the Commission to approve the application, after which the records are retained by the licensee for 15 years, at which time the Commission terminates the facility license. The records are retained for a total of 19 years. In addition, it is assumed that an applicant spends 3 hours per year to maintain the records. The estimated annual cost for recordkeeping is $315 per applicant (3 hours × $105/hour). Thus, the discounted flow of funds of the recordkeeping costs for one application is $3,400 and $1,700 using 3- and 7-percent discount rates, respectively.

After a manufacturing license application is approved by the NRC, any change to a design feature or functional capability credited for avoiding or mitigating the effects of an aircraft impact will require that the licensee consider the effect of the changed feature or capability on the original assessment. The applicant must describe how the modified design feature or functional capability continues to meet the assessment requirements in the aircraft impact rule. However, the NRC staff concludes that after a manufacturing license is approved, it is unlikely that a licensee will make any changes to design features or functional capabilities credited in the design at the application stage. Therefore, no industry cost analysis is needed for this portion of the regulatory action.

The total industry cost is the sum of the implementation and operation costs. The implementation cost is the present value of the assumed one application ($415,000) which when discounted is $310,000 (using a 3-percent discount rate) and $210,000 (using a 7-percent discount rate). The operating costs are $3,400 and $1,700 using the 3- and 7-percent discount rates as shown previously. Therefore, the total discounted industry costs are $313,400 and $211,700 using 3- and 7-percent discount rates, respectively.

3.5.9 Manufacturing License Applications Referencing a Standard Design Certification Issued Before the Effective Date of the Rule Which Has Not Been Amended To Comply With the Rule

Under the regulatory action, an applicant for a manufacturing license who references one of the four currently approved design certifications will need to comply with the requirements for an aircraft impact assessment in 10 CFR 50.150. However, the NRC staff concludes that it is unlikely that a request for a manufacturing license referencing one of these four design certifications will be submitted to the NRC for approval during the next 20 years. Therefore, no cost-benefit analysis is needed for this type of manufacturing license application.

3.5.10 NRC Implementation

Cost to Review the Applicant's Results. The NRC will incur costs to review the actions taken by the applicant to comply with the aircraft impact rule. The one-time cost for NRC verification of compliance with the rule, consisting of reviewing the information submitted by each applicant and onsite inspection of the assessment, is estimated to be $125,000 (7.8 staff-months × 4 weeks/month × 40 hours/week × $100/hour). As an example, the total NRC cost in the year that the rule is promulgated (*i.e.,* year 0), is the present value of the costs to review the actions taken and assessments for three applications for a standard design certification. The NRC staff estimates the cost to be $375,000 for the three applications. Table 3 shows the discounted flow of funds (using 3- and 7-percent discount rates) of the NRC implementation costs over 20 years to review the applications for a standard design certification; renewal of an existing standard design certification; combined license that does not reference a standard design certification, standard design approval, or manufactured reactor; combined license that references a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule; and manufacturing license that does not reference a standard design certification.

Cost to Renew an Existing Design Certification. The costs to the NRC to conduct a rulemaking to adopt the renewal of an existing design certification are not included in this analysis because they are not an impact of this rule.

Cost to Develop Guidance. The NRC assumes that it will take about 3.0 full-time staff years to develop guidance to support implementation of the regulatory action. The cost to develop guidance is estimated to be $500,000.

Cost to Provide Training. The NRC will incur costs to develop a training course to instruct NRC staff on the changes to 10 CFR parts 50 and 52. Assuming that it will take 20 staff-hours to develop the training course, the cost is estimated to be $2,000 (20 staff-hours × $100/hour). The cost to train 20 people for 2 hours, plus the instructor's time of 2 hours is estimated to be $4,200 (21 people × 2 hours × $100/hour). The total cost to the NRC to provide training for the regulatory action is estimated to be $6,000.

Table 3 shows the discounted flow of funds of the total NRC implementation costs for the regulatory action over 20 years.

TABLE 3—SUMMARY OF NRC IMPLEMENTATION COSTS

Year	Application		Implementation costs	
	Number reviewed	Category *	Using 7-percent discount rate ($1,000)	Using 3-percent discount rate ($1,000)
0	3	DC	375	375
0	1	COL	125	125
1	1	DC (renewal)	115	120
4	1	DC	95	110
8	1	DC	75	100
10	1	COL	65	95
10	1	ML	65	95
12	1	DC	55	90
16	1	DC	40	80

TABLE 3—SUMMARY OF NRC IMPLEMENTATION COSTS—Continued

Year	Application		Implementation costs	
	Number reviewed	Category *	Using 7-percent discount rate ($1,000)	Using 3-percent discount rate ($1,000)
20	1	DC	30	70
Cost to Review All Applications			1,040	1,260
Cost to Develop Guidance			500	500
Cost to Provide Training			6	6
Total (rounded)			1,500	1,800

* DC = design certification. COL = combined license application. ML = manufacturing license application.

3.5.11 Impacts to Other Stakeholders

The NRC staff has not identified any impacts to other stakeholders or the Agreement States. However, the action is expected to lead to an increase in public confidence because nuclear power plant designers will perform a rigorous assessment of design features and functional capabilities that could provide additional inherent protection to withstand the effects of an aircraft impact.

3.5.12 Qualitative Benefits of the Action

The benefits of the final rule can be evaluated only on a qualitative basis. The analysis estimates that the action will result in qualitative benefits in public health (accidental), occupational health (accidental), offsite property, onsite property, improvements in knowledge, and safeguards and security considerations.

Specifically, the benefits will include improvements in knowledge because applicants for new nuclear power reactors will need to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft. If the effects of an aircraft impact are not assessed by nuclear power plant designers at the design stage, it will be more difficult at a later time to enhance the facility's inherent robustness to show that it can withstand the effects of an aircraft impact. Furthermore, applicants will need to use realistic analyses to identify and incorporate design features and functional capabilities to show, with reduced use of operator actions, that either the reactor core remains cooled or the containment remains intact, and either spent fuel cooling or spent fuel pool integrity is maintained. In this manner, this rule should result in new nuclear power reactor facilities being more inherently robust with regard to an aircraft impact than if they were designed in the absence of this rule.

In addition, because the impact of a large, commercial aircraft is a beyond-design-basis event, this rule provides an enhanced level of protection beyond that which is provided by the existing adequate protection requirements, which all operating power reactors are required to meet.

4. Presentation of Results

Table 4 summarizes the results of the cost analysis for industry.

TABLE 4—SUMMARY OF TOTAL INDUSTRY COSTS FOR ACTION

Category of application*	Using 7-percent discount rate ($1,000)	Using 3-percent discount rate ($1,000)
	Implementation costs	
DC	2,190	2,680
DC (renewal)	370	390
COL	625	725
ML	210	310
	Operating costs	
DC	17.54	30.1
DC (renewal)	3.0	4.2
COL	6.5	14.1
ML	1.7	3.4
Total (rounded)	3,400	4,200

* DC = design certification. COL = combined license application. ML = manufacturing license application.

Table 5 shows the total costs of the regulatory action.

TABLE 5—SUMMARY OF INDUSTRY AND NRC COSTS

	Using 7-percent discount rate ($1,000)	Using 3-percent discount rate ($1,000)
Industry	3,400	4,200
NRC	1,500	1,800
Total (rounded)	4,900	6,000

5. Decision Rationale

The total present-valued costs of this action are $6.0 million and $4.9 million for 3- and 7-percent discount rates, respectively. The benefits are expressed only qualitatively and are discussed in Section 3.5.11 of this regulatory analysis. As noted previously, the key benefit is improvement in knowledge because the final rule requires applicants for new nuclear power reactors to perform a design-specific assessment of the effects of the impact of a large, commercial aircraft. The applicant is required to use realistic analyses to identify and incorporate design features and functional capabilities to show, with reduced use of operator actions, that either the reactor core remains cooled or the containment remains intact, and either spent fuel cooling or spent fuel pool integrity is maintained.

6. Implementation Schedule

The final rule will become effective 30 days after publication in the **Federal Register**.

XV. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule affects only the licensing of nuclear power plants. The companies that will apply for an approval, certification, permit, or license in accordance with the regulations affected by this rule do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XVI. Backfit Analysis

The NRC has determined that, except in one respect, the backfit rule, 10 CFR 50.109, and comparable provisions in 10 CFR part 52, do not apply to this final rule and, therefore, a backfit analysis is not required, because the final rule—with one exception—does not contain any provisions which either impose backfitting as defined in the backfit rule or is otherwise inconsistent with any of the comparable backfitting and finality provisions in part 52. The aircraft impact assessment requirements apply to new construction permits; new operating licenses that reference a new construction permit; new standard design certifications; new standard design approvals; manufacturing licenses that don't reference a standard design certification or standard design approval, or that reference a design certification issued before the effective date of the rule which has not been amended to comply with the rule; and combined licenses that don't reference a standard design certification, standard design approval, or manufactured reactor, or that reference a standard design certification issued before the effective date of the rule which has not been amended to comply with the rule. They also apply to renewal of the four existing design certifications in 10 CFR part 52, appendices A through D, if the design has not previously been amended to comply with the aircraft impact rule. However, combined license applicants referencing one of the four currently approved design certifications must comply with the rule. The backfitting issues for each of these licenses, certifications, and regulatory approvals are discussed below.

Construction Permits and Operating Licenses

The aircraft impact rule applies to construction permits issued after July 13, 2009, the effective date of the rule. To the extent that the aircraft impact rule revises the requirements for future construction permits, the requirements do not constitute backfitting, because the requirements in the final aircraft impact rule are prospective in nature and effect. The backfit rule was not intended to apply to every NRC action which substantially changes the expectations of future applicants under 10 CFR part 50. The final rule also does not apply to current holders of construction permits. Hence, there is no backfitting of current holders of construction permits. The final aircraft impact rule also does not apply to applicants for operating licenses whose underlying construction permits are issued before July 13, 2009. Inasmuch as the aircraft impact rule is not imposed as a requirement on operating license applicants whose underlying construction permits were issued before July 13, 2009, there is no backfitting associated with such existing operating licenses. However, future applicants for operating licenses whose underlying construction permits were also issued after July 13, 2009 are required to comply with the aircraft impact rule. To the extent that the rule revises the requirements for future operating license applicants whose construction permits are issued after July 13, 2009, the requirements do not constitute backfitting, because the requirements in the final aircraft impact rule are prospective in nature and effect. The backfit rule was not intended to apply to every NRC action which substantially changes the expectations of future applicants under 10 CFR part 50.

New Design Certifications and New Design Approvals

The aircraft impact rule applies to new standard design certifications and new standard design approvals. To the extent that the aircraft impact rule revises the requirements for future design certifications and design approvals issued after July 13, 2009, the requirements do not constitute backfitting, because the requirements in the aircraft impact rule are prospective in nature and effect. The backfit rule was not intended to apply to every NRC action which substantially changes the expectations of future applicants under 10 CFR part 52.

Four Currently-Approved Design Certifications

The aircraft impact rule does not directly change any of the four currently approved design certifications in 10 CFR part 52, appendices A through D, because the rule does not require that the aircraft impact assessment be performed for those four design certifications during their current terms, nor does the rule require that they be modified to include any design features

or functional capabilities that meet the criteria in the rule. However, the aircraft impact rule requires a combined license applicant referencing one of the four currently approved design certifications to perform the assessment required by the aircraft impact rule. In addition, the rule requires that if any of the four design certifications are renewed, then the renewed design must meet the requirements of the rule. Both situations raise backfitting concerns, which are addressed separately below.

1. Effect During Current Term of Design Certification

The aircraft impact rule requires a combined license applicant referencing one of the four currently approved design certifications to perform the assessment required by the rule. As such, the aircraft impact rule changes the circumstances under which an applicant for combined license may reference one of the four currently approved design certifications. In addition, by requiring the combined license applicant to perform the assessment, and describe plant design features and functional capabilities that are within the scope of the certified design, the aircraft impact rule may be viewed as effectively constituting a change to the design certification. Each of the four currently approved design certification rules contains several provisions generally addressing the referencing of the design certification. None of these provisions require a referencing combined license applicant to, in effect, modify the referenced design to address aircraft impacts. Moreover, Section VI, ''Issue Resolution,'' of each currently approved design certification states that the NRC's safety finding on the design ''includes the finding that additional or alternative structures, systems, components, design features, * * * acceptance criteria, or justifications are not necessary * * *.'' In light of these provisions, the NRC believes that the final aircraft impact rule requirements effectively constitute a change to these design certifications, and the applicable criteria of Section VI of each design certification rule and 10 CFR 52.63(a)(1) must be met by the aircraft impact rule.

However, the NRC does not believe that these criteria can be satisfied. Accordingly, the Commission has decided to administratively exempt the aircraft impact rule from these finality and issue resolution provisions in 10 CFR part 52. The Commission's decision is grounded on the following considerations. First, the Commission believes that performance of the assessment required by the rule and incorporation of design features and functional capabilities identified by the assessment constitutes a substantial increase in overall protection of public health and safety and common defense and security of the design and operation of a nuclear power plant constructed in accordance with the referenced design certification, and that direct and indirect implementation costs of compliance with the aircraft impact rule are justified in view of the increased safety and security. Performing the assessment itself provides a substantial safety benefit in reducing licensee and regulatory uncertainty regarding the capability (and vulnerability) of the design to the impact of a large, commercial aircraft. Although it is difficult to quantify the safety enhancement gained through implementation of the aircraft impact rule, the NRC nevertheless believes that the cost of performing the assessment and incorporating the results into the design, as outlined in Section XIV, ''Regulatory Analysis,'' of the Supplementary Information of this document, is justified in view of the increased safety provided by implementation of the aircraft impact rule.

Second, all of the four currently approved certified designs contain one or more advanced reactor attributes described in the Commission's ''Policy Statement on Regulation of Advanced Reactors,'' (73 FR 60612; October 14, 2008). These attributes include the use of highly reliable and less complex shutdown and decay heat removal systems, longer time constants and sufficient instrumentation to allow for more diagnosis and management before reaching safety system challenge and/or exposure of vital equipment to adverse conditions, and designs that minimize the potential for severe accidents and their consequences by providing sufficient inherent safety, reliability, redundancy, diversity and independence in safety systems. Incorporation of design features and functional capabilities identified as part of the assessment required by the aircraft impact rule will serve to further enhance the availability, capability and effectiveness of those advanced reactor attributes included in each of the currently approved certified designs.

It also appears that a broad range of stakeholders supported the overarching concept that all newly-constructed nuclear power plants should be required to meet the aircraft impact rule. All of the commenters representing non-governmental organizations unaffiliated with the nuclear industry supported the application of the aircraft impact rule to all newly-constructed reactors—including those referencing currently approved design certifications—and to all of the currently approved design certifications regardless of whether they have been referenced in a combined license application. NEI—the industry organization representing, in part, the companies who are most likely to be combined license applicants and, therefore, most likely to be adversely affected by a NRC decision to impose the aircraft impact rule on such applicants—supported the extension of the aircraft impact rule to all future combined license applicants. The original applicants for three of the four existing design certifications supported application of the aircraft impact rule to combined license applications referencing one of the four currently approved designs. The NRC is aware that Westinghouse Electric Company, LLC, which was the original applicant for the AP1000 design certification, is seeking an amendment to the design certification to address the (anticipated final) aircraft impact rule. The NRC notes that any adverse backfitting impact is limited inasmuch as: (i) No combined license referencing any of the four existing design certifications has been issued, (ii) combined license applications referencing one of the four existing design certifications are still in the early stages of NRC review, and (iii) the detailed aircraft impact parameters were made available to design certification applicants and affected combined license applicants in early 2008.

Finally, the Commission emphasizes that this is a highly exceptional action limited to the specific circumstances of this rulemaking. The Commission has only once before taken action to administratively exempt a rulemaking from applicable backfitting or issue finality provisions, and in that one instance (involving revisions to 10 CFR part 26, fitness for duty requirements) the NRC ultimately withdrew the rulemaking, see SRM on SECY–99–141 (June 24, 1999). Although the Commission cannot, as a categorical matter, rule out the possibility of its taking administrative exemptions in the future, the Commission emphasizes that administrative exemptions will continue to be an extremely rare action to be taken only if regulatory considerations strongly favor taking such administrative exemption.

2. Effect at Renewal

The aircraft impact rule requires that if any of the four design certifications be renewed, then the renewed design meet the requirements of the rule. The NRC

evaluated whether 10 CFR 50.150(a)(3)(iii)(B) and the conforming revision to 10 CFR 52.59(a), which implement this requirement governing the renewal of these four design certifications, together represent a violation of the finality protection provided by 10 CFR 52.59(b). The NRC concludes that these requirements do not violate the finality protection accorded by those regulatory provisions. The finality protections accorded by 10 CFR 52.59(b) requirements do not absolutely preclude the NRC from applying new or modified requirements to the design certification at the renewal stage. To impose a new or modified requirement at renewal, the NRC need only find that the requirement is either necessary for adequate protection, necessary for compliance with requirements in effect at the time of initial certification, or provides a substantial increase in protection to public health and safety or common defense and security that justifies the cost of implementing the new requirements.

As part of this rulemaking, the NRC makes the finding that the aircraft impact rule, when imposed upon any one of the four design certifications at the time of renewal, constitutes a substantial increase in protection to public health and safety. The reasons for the NRC's finding are set forth in the discussion above in ''Effect during current term of design certification'' and in the overall discussion in this statement of considerations of the reasons underlying the adoption of this rule. Accordingly, the NRC has decided to impose by rule a requirement that each of the four currently approved design certification, if renewed, meet the requirements of the aircraft impact rule if they have not been previously amended to comply with the rule. Inasmuch as the NRC has made a generic finding that the rule constitutes a substantial increase in protection to public health and safety and thereby meets the criteria for design certification renewal in 10 CFR 52.59(b), the NRC does not intend to make an additional finding on the same subject in any renewal proceeding for one of the currently approved design certifications.

Combined Licenses

The final aircraft impact rule applies to all combined licenses which do not reference a standard design certification, standard design approval or manufactured reactor. There are no existing combined licenses protected by the backfitting restrictions in 10 CFR 50.109 or the finality provisions in 10 CFR part 52. To the extent that the final rule revises the requirements for future combined licenses, including combined license applications which are currently pending before the NRC, the requirements do not constitute backfitting nor are they otherwise inconsistent with the finality provisions in 10 CFR part 52, because the requirements in the final aircraft impact rule are prospective in nature and effect. Neither the backfit rule nor the finality provisions in 10 CFR part 52 were intended to apply to every NRC action which substantially changes the expectations of future applicants under 10 CFR part 52.

Manufacturing Licenses

The final aircraft impact rule applies to all manufacturing licenses which do not reference a standard design certification or standard design approval. There are no existing manufacturing licenses protected by the backfitting restrictions in 10 CFR 50.109 or the finality provisions in 10 CFR part 52. To the extent that the final rule revises the requirements for future manufacturing licenses, the requirements do not constitute backfitting nor are they otherwise inconsistent with the finality provisions in 10 CFR part 52, because the requirements in the final aircraft impact rule are prospective in nature and effect. Neither the backfit rule nor the finality provisions in 10 CFR part 52 were intended to apply to every NRC action which substantially changes the expectations of future applicants under 10 CFR part 52.

XVII. Congressional Review Act

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

List of Subjects

10 CFR Part 50

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

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 50 and 52.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

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

Authority: Secs. 102, 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111). Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138).

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

■ 2. In § 50.8, paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.62, 50.63, 50.64, 50.65, 50.66, 50.68, 50.69, 50.70, 50.71, 50.72, 50.74, 50.75, 50.80, 50.82, 50.90, 50.91, 50.120, 50.150, and appendices A, B, E, G, H, I, J, K, M, N,O, Q, R, and S to this part.

* * * * *

■ 3. In § 50.34, paragraphs (a)(13) and (b)(12) are added to read as follows:

§ 50.34 Contents of applications; technical information.

(a) * * *

(13) On or after July 13, 2009, stationary power reactor applicants who apply for a construction permit shall submit the information required by 10 CFR 50.150(b) as a part of their preliminary safety analysis report.

(b) * * *

(12) On or after July 13, 2009, stationary power reactor applicants who apply for an operating license which is subject to 10 CFR 50.150(a) shall submit the information required by 10 CFR 50.150(b) as a part of their final safety analysis report.

* * * * *

■ 4. A new undesignated center heading is added before § 50.120 to read as follows:

Additional Standards for Licenses, Certifications, and Regulatory Approvals

■ 5. A new § 50.150 is added to read as follows:

§ 50.150 Aircraft impact assessment.

(a) *Assessment requirements.* (1) *Assessment.* Each applicant listed in paragraph (a)(3) shall perform a design-specific assessment of the effects on the facility of the impact of a large, commercial aircraft. Using realistic analyses, the applicant shall identify and incorporate into the design those design features and functional capabilities to show that, with reduced use of operator actions:

(i) The reactor core remains cooled, or the containment remains intact; and

(ii) spent fuel cooling or spent fuel pool integrity is maintained.

(2) *Aircraft impact characteristics.*[1] The assessment must be based on the beyond-design-basis impact of a large, commercial aircraft used for long distance flights in the United States, with aviation fuel loading typically used in such flights, and an impact speed and angle of impact considering the ability of both experienced and inexperienced pilots to control large, commercial aircraft at the low altitude representative of a nuclear power plant's low profile.

(3) *Applicability.* The requirements of paragraphs (a)(1) and (a)(2) of this section apply to applicants for:

(i) Construction permits for nuclear power reactors issued under this part after July 13, 2009;

(ii) Operating licenses for nuclear power reactors issued under this part for which a construction permit was issued after July 13, 2009;

(iii)(A) Standard design certifications issued under part 52 of this chapter after July 13, 2009;

(B) Renewal of standard design certifications in effect on July 13, 2009 which have not been amended to comply with the requirements of this section by the time of application for renewal;

(iv) Standard design approvals issued under part 52 of this chapter after July 13, 2009;

(v) Combined licenses issued under part 52 of this chapter that:

(A) Do not reference a standard design certification, standard design approval, or manufactured reactor; or

(B) Reference a standard design certification issued before July 13, 2009 which has not been amended to address the requirements of this section; and

(vi) Manufacturing licenses issued under part 52 of this chapter that:

(A) Do not reference a standard design certification or standard design approval; or

(B) Reference a standard design certification issued before July 13, 2009 which has not been amended to address the requirements of this section.

(b) *Content of application.* For applicants identified in paragraph (a)(3) of this section, the preliminary or final safety analysis report, as applicable, must include a description of:

(1) The design features and functional capabilities identified in paragraph (a)(1) of this section; and

(2) How the design features and functional capabilities identified in paragraph (a)(1) of this section meet the assessment requirements in paragraph (a)(1) of this section.

(c) *Control of changes.* (1) For construction permits which are subject to paragraph (a) of this section, if the permit holder changes the information required by 10 CFR 50.34(a)(13) to be included in the preliminary safety analysis report, then the permit holder shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a) and amend the information required by 10 CFR 50.34(a)(13) to be included in the preliminary safety analysis report to describe how the modified design features and functional capabilities continue to meet the assessment requirements in paragraph (a)(1) of this section.

(2) For operating licenses which are subject to paragraph (a) of this section, if the licensee changes the information required by 10 CFR 50.34(b)(12) to be included in the final safety analysis report, then the licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a) and amend the information required by 10 CFR 50.34(b)(12) to be included in the final safety analysis report to describe how the modified design features and functional capabilities continue to meet the assessment requirements in paragraph (a)(1) of this section.

(3) For standard design certifications which are subject to paragraph (a) of this section, generic changes to the information required by 10 CFR 52.47(a)(28) to be included in the final safety analysis report are governed by the applicable requirements of 10 CFR 52.63.

(4)(i) For combined licenses which are subject to paragraph (a) of this section, if the licensee changes the information required by 10 CFR 52.79(a)(47) to be included in the final safety analysis report, then the licensee shall consider the effect of the changed feature or capability on the original assessment required by 10 CFR 50.150(a) and amend the information required by 10 CFR 52.79(a)(47) to be included in the final safety analysis report to describe how the modified design features and functional capabilities continue to meet the assessment requirements in paragraph (a)(1) of this section.

(ii) For combined licenses which are not subject to paragraph (a) of this section but reference a standard design certification which is subject to paragraph (a) of this section, proposed departures from the information required by 10 CFR 52.47(a)(28) to be included in the final safety analysis report for the referenced standard design certification are governed by the change control requirements in the applicable design certification rule.

(iii) For combined licenses which are not subject to paragraph (a) of this section but reference a manufactured reactor which is subject to paragraph (a) of this section, proposed departures from the information required by 10 CFR 52.157(f)(32) to be included in the final safety analysis report for the manufacturing license are governed by the applicable requirements in 10 CFR 52.171(b)(2).

(5)(i) For manufacturing licenses which are subject to paragraph (a) of this section, generic changes to the information required by 10 CFR 52.157(f)(32) to be included in the final safety analysis report are governed by

[1] Changes to the detailed parameters on aircraft impact characteristics set forth in guidance shall be approved by the Commission.

the applicable requirements of 10 CFR 52.171.

(ii) For manufacturing licenses which are not subject to paragraph (a) of this section but reference a standard design certification which is subject to paragraph (a) of this section, proposed departures from the information required by 10 CFR 52.47(a)(28) to be included in the final safety analysis report for the referenced standard design certification are governed by the change control requirements in the applicable design certification rule.

PART 52—LICENSES, CERTIFICATIONS, AND APPROVALS FOR NUCLEAR POWER PLANTS

■ 6. The authority citation for part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

■ 7. In § 52.47, paragraph (a)(28) is added to read as follows:

§ 52.47 Contents of applications; technical information.

* * * * *

(a) * * *

(28) For applications for standard design certifications which are subject to 10 CFR 50.150(a), the information required by 10 CFR 50.150(b).

* * * * *

■ 8. In § 52.59, paragraph (a) is revised to read as follows:

§ 52.59 Criteria for renewal.

(a) The Commission shall issue a rule granting the renewal if the design, either as originally certified or as modified during the rulemaking on the renewal, complies with the Atomic Energy Act and the Commission's regulations applicable and in effect at the time the certification was issued, provided, however, that the first time the Commission issues a rule granting the renewal for a standard design certification in effect on July 13, 2009, the Commission shall, in addition, find that the renewed design complies with the applicable requirements of 10 CFR 50.150.

* * * * *

■ 9. In § 52.79, paragraph (a)(47) is added to read as follows:

§ 52.79 Contents of applications; technical information in final safety analysis report.

(a) * * *

(47) For applications for combined licenses which are subject to 10 CFR 50.150(a), the information required by 10 CFR 50.150(b).

* * * * *

■ 10. In § 52.137, paragraph (a)(26) is added to read as follows:

§ 52.137 Contents of applications; technical information.

* * * * *

(a) * * *

(26) For applications for standard design approvals which are subject to 10 CFR 50.150(a), the information required by 10 CFR 50.150(b).

* * * * *

■ 11. In § 52.157, paragraph (f)(32) is added to read as follows:

§ 52.157 Contents of applications; technical information in final safety analysis report.

* * * * *

(f) * * *

(32) For applications for manufacturing licenses which are subject to 10 CFR 50.150(a), the information required by 10 CFR 50.150(b).

Dated at Rockville, Maryland, this 4th day of June 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. E9–13582 Filed 6–11–09; 8:45 am]

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