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Presidential Documents

Title 3—

The President

Executive Order 13527 of December 30, 2009

Establishing Federal Capability for the Timely Provision of Medical Countermeasures Following a Biological Attack

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It is the policy of the United States to plan and prepare for the timely provision of medical countermeasures to the American people in the event of a biological attack in the United States through a rapid Federal response in coordination with State, local, territorial, and tribal governments.

This policy would seek to: (1) mitigate illness and prevent death; (2) sustain critical infrastructure; and (3) complement and supplement State, local, territorial, and tribal government medical countermeasure distribution capacity.

Sec. 2. *United States Postal Service Delivery of Medical Countermeasures.* (a) The U.S. Postal Service has the capacity for rapid residential delivery of medical countermeasures for self administration across all communities in the United States. The Federal Government shall pursue a national U.S. Postal Service medical countermeasures dispensing model to respond to a large-scale biological attack.

(b) The Secretaries of Health and Human Services and Homeland Security, in coordination with the U.S. Postal Service, within 180 days of the date of this order, shall establish a national U.S. Postal Service medical countermeasures dispensing model for U.S. cities to respond to a large-scale biological attack, with anthrax as the primary threat consideration.

(c) In support of the national U.S. Postal Service model, the Secretaries of Homeland Security, Health and Human Services, and Defense, and the Attorney General, in coordination with the U.S. Postal Service, and in consultation with State and local public health, emergency management, and law enforcement officials, within 180 days of the date of this order, shall develop an accompanying plan for supplementing local law enforcement personnel, as necessary and appropriate, with local Federal law enforcement, as well as other appropriate personnel, to escort U.S. Postal workers delivering medical countermeasures.

Sec. 3. *Federal Rapid Response.* (a) The Federal Government must develop the capacity to anticipate and immediately supplement the capabilities of affected jurisdictions to rapidly distribute medical countermeasures following a biological attack. Implementation of a Federal strategy to rapidly dispense medical countermeasures requires establishment of a Federal rapid response capability.

(b) The Secretaries of Homeland Security and Health and Human Services, in coordination with the Secretary of Defense, within 90 days of the date of this order, shall develop a concept of operations and establish requirements for a Federal rapid response to dispense medical countermeasures to an affected population following a large-scale biological attack.

Sec. 4. *Continuity of Operations.* (a) The Federal Government must establish mechanisms for the provision of medical countermeasures to personnel performing mission-essential functions to ensure that mission-essential functions of Federal agencies continue to be performed following a biological attack.

(b) The Secretaries of Health and Human Services and Homeland Security, within 180 days of the date of this order, shall develop a plan for the provision of medical countermeasures to ensure that mission-essential functions of executive branch departments and agencies continue to be performed following a large-scale biological attack.

Sec. 5. *General Provisions.*

(a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
December 30, 2009.

[FR Doc. 2010–38
Filed 1–5–10; 8:45 am]
Billing code 3195–W0–P

Rules and Regulations

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. FAA–2009–0767; SFAR 106]

RIN 2120–AJ55

Use of Additional Portable Oxygen Concentrator Devices on Board Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Special Federal Aviation Regulation 106 (SFAR 106), Use of Certain Portable Oxygen Concentrator Devices on Board Aircraft, to allow for the use of four additional portable oxygen concentrator (POC) devices on board aircraft, provided certain conditions in the SFAR are met. This action is necessary to allow all POC devices deemed acceptable by the FAA to be available to the traveling public in need of oxygen therapy, for use in air commerce. When this rule becomes effective, there will be a total of 11 different POC devices the FAA finds acceptable for use on board aircraft, and passengers will be able to carry these devices on board the aircraft and use them with the approval of the aircraft operator.

DATES: This final rule amending SFAR 106 will become effective on January 6, 2010.

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code (49 U.S.C.). 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.

The FAA is authorized to issue this final rule pursuant to 49 U.S.C. Section 44701. Under that section, the FAA is authorized to establish regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for air commerce and national security.

Background

On July 12, 2005, the FAA published Special Federal Aviation Regulation 106 (SFAR 106) entitled, ''Use of Certain Portable Oxygen Concentrator Devices on Board Aircraft'' (70 FR 40156). SFAR 106 is the result of a notice the FAA published in July 2004 (69 FR 42324) to address the needs of passengers who must travel with medical oxygen. Prior to publication of SFAR 106, passengers in need of medical oxygen during air transportation faced many obstacles when requesting service. Many aircraft operators did not provide medical oxygen service aboard flights, and those that did often provided service at a price that travelers could not afford. Coordinating service between operators and suppliers at airports was also difficult, and passengers frequently chose not to fly because of these difficulties.

New medical oxygen technologies approved by the Food and Drug Administration (FDA) reduce the risks typically associated with compressed oxygen and provide a safe alternative for passengers who need oxygen therapy. Several manufacturers have developed small portable oxygen concentrators (POC) that work by separating oxygen from nitrogen and other gases contained in ambient air and dispensing it in concentrated form to the user with an oxygen concentration of about 90%. The POCs operate using either rechargeable batteries or, if the aircraft operator obtains approval from the FAA, aircraft electrical power.

In addition, the Pipeline and Hazardous Materials Safety Administration (PHMSA) has determined that the POCs covered by this amendment are not hazardous materials. Thus, they do not require the same level of special handling as compressed oxygen, and are safe for use on board aircraft, provided certain conditions for their use are met.

SFAR 106 permits passengers to carry on and use certain POCs on board aircraft if the aircraft operator ensures that the conditions specified in the SFAR for their use are met. The devices initially determined acceptable for use in SFAR 106, published July 12, 2005, were the *AirSep Corporation's LifeStyle* and the *Inogen, Inc.'s Inogen One* POCs. SFAR 106 was amended on September 12, 2006, (71 FR 53954) to add three additional POC devices, *AirSep Corporation's FreeStyle, SeQual Technologies' Eclipse,* and *Repironics Inc.'s EverGo,* to the original SFAR. SFAR 106 was amended again on January 15, 2009, (74 FR 2351) in a similar manner to add two more POC devices, *Delphi Medical Systems' RS–00400* and *Invacare Corporation's XPO2,* to the original SFAR. This final rule adds four additional POC devices, *DeVilbiss Healthcare Inc.'s iGo, International Biophysics Corporation's LifeChoice, Inogen Inc.'s Inogen One G2,* and *Oxlife LLC.'s Oxlife Independence Oxygen Concentrator,* that may be carried on and used by a passenger on board an aircraft.

Aircraft operators can now offer medical oxygen service as they did before SFAR 106 was enacted, or they can meet certain conditions and allow passengers to carry on and use one of the POC devices covered in SFAR 106. SFAR 106 is an enabling rule, which means that no aircraft operator is required to allow passengers to operate these POC devices on board its aircraft, but it may allow them to be operated on board. If one of these devices is allowed by the aircraft operator to be carried on board, the conditions in the SFAR must be met.

When SFAR 106 was published, the FAA committed to establishing a single standard for all POCs so that regulations wouldn't apply to specific manufacturers and models of device. Whenever possible, the FAA tries to regulate by creating performance-based standards rather than approving by manufacturer. In the case of SFAR 106, the quickest and easiest way to serve both the passenger and the aircraft operator was to allow the use of the

devices determined to be acceptable by the FAA in SFAR 106 in a special, temporary regulation. As we stated in the preamble discussion of the final rule that established SFAR 106, ''while we are committed to developing a performance-based standard for all future POC devices, we do not want to prematurely develop standards that have the effect of stifling new technology of which we are unaware.'' We developed and published SFAR 106 so that passengers who otherwise could not fly could do so with an affordable alternative to what existed before SFAR 106 was published.

We continue to pursue the performance-based standard for all POCs. This process is time-consuming and we intend to publish a notice in the **Federal Register** and offer the public a chance to comment on the proposal when it is complete. In the meantime, manufacturers continue to create new and better POCs, and several have requested that their product also be included as an acceptable device in SFAR 106. These manufacturers include DeVilbiss Healthcare Inc., International Biophysics Corporation, Inogen Inc., and Oxlife LLC. Each of these companies has formally petitioned the FAA for inclusion in SFAR 106 by submitting documentation of the devices to the Department of Transportation's Docket Management System. That documentation is available at *http://www.regulations.gov* under the following docket numbers:

1. DeVilbiss Healthcare Inc.—FAA–2008–0963;
2. International Biophysics Corporation—FAA–2009–0087;
3. Inogen Inc.—FAA–2009–0620; and
4. Oxlife LLC—FAA–2009–0065.

As stated in Section 2 of SFAR 106, no covered device may contain hazardous materials as determined by PHMSA (written documentation necessary), and each device must also be regulated by the FDA. Each petitioner included technical specifications for the devices in their request for approval, along with the required documentation from PHMSA and the FDA. The petitioners provided the FAA with the required documentation for the following POC devices:

1. DeVilbiss Healthcare Inc.'s iGo;
2. International Biophysics Corporation's LifeChoice;
3. Inogen Inc.'s Inogen One G2; and
4. Oxlife LLC.'s Oxlife Independence Oxygen Concentrator.

The Rule

This amendment to SFAR 106 will include the *DeVilbiss Healthcare Inc.'s iGo, International Biophysics Corporation's LifeChoice, Inogen Inc.'s Inogen One G2,* and *Oxlife LLC.'s Oxlife Independence Oxygen Concentrator* devices in the list of POC devices authorized for use in air commerce. The FAA has reviewed each individual device and accepted the documentation provided by the manufacturers. That documentation includes letters provided to the manufacturer by PHMSA and the FDA affirming the status of each device as it pertains to the requisites stated in SFAR 106.

After reviewing the applicable FDA safety standards and the PHMSA findings, these devices were determined by the FAA to be acceptable for use in air commerce.

Good Cause for Adoption of This Final Rule Without Notice and Comment

As stated above, SFAR 106 was published on July 12, 2005. We stated in the preamble of that final rule that the *AirSep LifeStyle* and *Inogen One* POC devices were the only known acceptable devices when the rule was published. We also stated in that final rule that ''we cannot predict how future products may be developed and work.'' We initiated a notice and comment period for the use of POC devices on board aircraft on July 14, 2004, (69 FR 42324) and responded to the comments received in response to that NPRM in the final rule published in 2005. Therefore, it is unnecessary to publish a notice to request comments on this amendment because all issues related to the use of POC devices on board an aircraft have already been discussed. Further notice and comment would also delay the acceptance of the *DeVilbiss Healthcare Inc.'s iGo, International Biophysics Corporation's LifeChoice, Inogen Inc.'s Inogen One G2,* and *Oxlife LLC.'s Oxlife Independence Oxygen Concentrator* POC devices as authorized for use on board aircraft, which would delay their availability for passengers in need of oxygen therapy.

Therefore, I find that notice and public comment under 5 U.S.C. 553(b) is unnecessary and contrary to the public interest. Further, I find that good cause exists for making this rule effective immediately upon publication.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations. I find that this action is fully consistent with my obligations under 49 U.S.C. 40105(b)(1)(A) to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new information collection requirements in SFAR 106 to the Office of Management and Budget for its review. OMB approved the collection of this information and assigned OMB Control Number 2120–0702.

This final rule requires that if a passenger carries a POC device on board the aircraft with the intent to use it during the flight, he or she must inform the pilot in command of that flight. Additionally, the passenger who plans to use the device must provide a written statement signed by a licensed physician that verifies the passenger's ability to operate the device, respond to any alarms, the extent to which the passenger must use the POC (all or a portion of the flight), and prescribes the maximum oxygen flow rate.

Please note that 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 Paperwork Reduction Act paragraph in the final rule that established SFAR 106 still applies to this amendment. The availability of four new POC devices will likely increase the availability and options for a passenger in need of oxygen therapy, but the paperwork burden discussed in the original final rule is unchanged. Therefore, the OMB Control Number associated with this collection remains 2120–0702.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In

developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or Tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This action amends Special Federal Aviation Regulation 106 (SFAR 106), Use of Certain Portable Oxygen Concentrator Devices On Board Aircraft, to allow for the use of the *DeVilbiss Healthcare Inc.'s iGo, International Biophysics Corporation's LifeChoice, Inogen Inc.'s Inogen One G2,* and *Oxlife LLC.'s Oxlife Independence Oxygen Concentrator* portable oxygen concentrator (POC) devices on board aircraft, provided certain conditions in the SFAR are met. This action is necessary to allow additional POC devices deemed acceptable by the FAA to be available to the traveling public in need of oxygen therapy, for use in air commerce. When this rule becomes effective, there will be a total of eleven different POC devices the FAA finds acceptable for use on board aircraft, and passengers will be able to carry these devices on board the aircraft and use them with the approval of the aircraft operator.

FAA has, therefore, determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and is not ''significant'' as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule adds *DeVilbiss Healthcare Inc.'s iGo, International Biophysics Corporation's LifeChoice, Inogen Inc.'s Inogen One G2,* and *Oxlife LLC.'s Oxlife Independence Oxygen Concentrator* to the list of authorized POC devices in SFAR 106. Its economic impact is minimal. Therefore, as the FAA Administrator, I certify that this action will not have a significant economic impact on a substantial number of small entities.

International Trade Analysis

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards are not considered unnecessary obstacles to the foreign commerce of the United States, so long as the standards have a legitimate domestic objective, such the protection of safety, and do not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA notes the purpose is to ensure the safety of the American public, and has assessed the effects of this rule to ensure it does not exclude imports that meet this objective. As a result, this final rule is not considered as creating an unnecessary obstacle to foreign commerce.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Plain Language

In response to the June 1, 1998, Presidential Memorandum regarding the use of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this

rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant energy action'' under the executive order because it is not a ''significant regulatory action'' and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by:

(1) Searching the Federal eRulemaking Portal at *http://www.regulations.gov;*

(2) Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

(3) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects in 14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Drug abuse, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends SFAR No. 106 to Chapter II of Title 14, Code of Federal Regulations, as follows:

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 41721, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

■ 2. Amend SFAR 106 by revising sections 2 and 3(a) introductory text to read as follows:

Special Federal Aviation Regulation 106—Rules for Use of Portable Oxygen Concentrator Systems on Board Aircraft

* * * * *

Section 2. *Definitions*—For the purposes of this SFAR the following definitions apply: Portable Oxygen Concentrator: means the *AirSep FreeStyle, AirSep LifeStyle, Delphi RS–00400, DeVilbiss Healthcare iGo, Inogen One, Inogen One G2, International Biophysics LifeChoice, Invacare XPO100, Oxlife Independence Oxygen Concentrator, Respironics EverGo,* and *SeQual Eclipse* Portable Oxygen Concentrator medical device units as long as those medical device units: (1) Do not contain hazardous materials as determined by the Pipeline and Hazardous Materials Safety Administration; (2) are also regulated by the Food and Drug Administration; and (3) assist a user of medical oxygen under a doctor's care. These units perform by separating oxygen from nitrogen and other gases contained in ambient air and dispensing it in concentrated form to the user.

Section 3. Operating Requirements—

(a) No person may use and no aircraft operator may allow the use of any portable oxygen concentrator device, except the *AirSep FreeStyle, AirSep LifeStyle, Delphi RS–00400, DeVilbiss Healthcare iGo, Inogen One, Inogen One G2, International Biophysics LifeChoice, Invacare XPO100, Oxlife Independence Oxygen Concentrator, Respironics EverGo,* and *SeQual Eclipse* Portable Oxygen Concentrator units. These units may be carried on and used by a passenger on board an aircraft provided the aircraft operator ensures that the following conditions are satisfied:

* * * * *

Issued in Washington, DC, on December 22, 2009.

J. Randolph Babbitt,

Administrator.

[FR Doc. E9–31380 Filed 1–5–10; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release No. IA–2965A; File No. S7–23–07]

RIN 3235–AJ96

Temporary Rule Regarding Principal Trades With Certain Advisory Clients

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; correction.

SUMMARY: On December 30, 2009, the Securities and Exchange Commission published a **Federal Register** document adopting as final Rule 206(3)–3T under the Investment Advisers Act of 1940, the interim final temporary rule that establishes an alternative means for investment advisers who are registered with the Commission as broker-dealers to meet the requirements of Section 206(3) of the Investment Advisers Act when they act in a principal capacity in transactions with certain of their advisory clients. As adopted, the only change to the rule was the expiration date in paragraph (d) of the section. Rule 206(3)–3T will sunset on December 31, 2010. This document makes a correction to that document.

DATES: Effective December 31, 2009. The **DATES** section for FR Doc. 2009–30877, published on December 30, 2009 (74 FR 69009) is corrected to read ''**DATES:** The amendments in this document are effective December 30, 2009 and the expiration date for 17 CFR 275.206(3)–3T is extended to December 31, 2010''.

FOR FURTHER INFORMATION CONTACT: Sarah A. Bessin, Assistant Director, Daniel S. Kahl, Branch Chief, or Matthew N. Goldin, Senior Counsel, at (202) 551–6787 or *IArules@sec.gov*, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–5041.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission is correcting the **DATES** section for FR Doc. 2009–30877, published on December 30, 2009 (74 FR 69009), to read ''**DATES:** The amendments in this document are effective December 20, 2009 and the expiration date for 17 CFR 275.206(3)–3T is extended to December 31, 2010.''

By the Commission.

Dated: December 31, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–31420 Filed 12–31–09; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

31 CFR Part 1

Freedom of Information Act, Privacy Act of 1974; Implementation

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Department of the Treasury's regulations on the disclosure of records under the Freedom of Information Act (FOIA) and its regulations concerning the Privacy Act of 1974 (Privacy Act). It also amends the appendices to these subparts setting forth the administrative procedures by which the Special Inspector General for the Troubled Asset Relief Program (''SIGTARP'') will process requests for records made under the FOIA, and setting forth the administrative procedures by which SIGTARP will implement the Privacy Act. In addition, the document revises the list of Treasury offices and bureaus found in this part.

DATES: *Effective Date:* January 6, 2010.

FOR FURTHER INFORMATION CONTACT: Dale Underwood, Privacy Act Officer, Department of the Treasury, phone number 202–622–0874 or *dale.underwood@do.treas.gov*.

SUPPLEMENTARY INFORMATION: These regulations update the list of Treasury bureaus and offices enumerated in 31 CFR 1.1 and 1.20, and more closely reflect the organization of the Department as set out in Treasury Order 101–05, ''Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury'' dated February 19, 2008.

Language is being added to the first paragraph of Section 1.1 to permit offices and bureaus to issue supplementary regulations applicable only to the component in question, which are consistent with the regulations. This will conform 31 CFR Section 1.1 with the language found in 31 CFR Section 1.20. Another change is to consistently use the term ''component'' in Section 1.1 and 1.20 rather than using the term ''offices and bureaus'' in one and ''components'' in the other.

The document also amends 31 CFR part 1 and the FOIA and Privacy Act procedures of Treasury's Departmental Offices found in the appendices to subparts A and C of this Part. It reflects the creation of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) authorized under Section 121 of The Emergency Economic Stabilization Act of 2008 (''Act''), Public Law 110–343. As an independent office of the Department of Treasury, SIGTARP is responsible for coordinating and conducting audits and investigations of the Troubled Asset Relief Program established by the Secretary under the Act.

The passage of the Homeland Security Act of 2002 established the Alcohol and Tobacco Tax and Trade Bureau (TTB) as a bureau of the Department of the Treasury and transferred certain functions of the Bureau of Alcohol, Tobacco, and Firearms to the Department of Justice. Three other bureaus, the United States Customs Service, Federal Law Enforcement Training Center, and the United States Secret Service, were transferred to the Department of Homeland Security. This final rule makes the necessary housekeeping changes to reflect the transfer of these bureaus and functions to other Federal Departments and the establishment of SIGTARP by revising the list of Treasury bureaus and offices and re-designating the respective paragraphs of Sections 1.1 and 1.20.

As part of the review undertaken to identify minor changes to the regulations in Subpart C it was found that a system of records that had been deleted from the Department's inventory of systems of records on April 17, 1992, at 57 FR 13900 had not been removed from the list of Privacy Act systems of records for which an exemption has been claimed pursuant to 5 USC 552a (k)(2). The final regulation makes this correction to Section 1.36 of subpart C, Paragraph (g)(1)(v)(iii) by removing the system of records entitled ''IRS 42.012–Combined Case Control File'' from the table.

Appendix A to subpart A of Part 1 (FOIA) is being amended to update the titles of those officials who have been identified for receipt of FOIA requests, administrative appeals, and appellate determinations for requests for expedited processing.

Appendix A to subpart C of Part 1 (Privacy Act) is being amended to update the offices or titles of those who receive Privacy Act requests, requests for amendment of records or administrative appeal of an initial determination not to amend a record. In addition, the instructions found in this appendix for delivering requests personally to the Main Treasury Building are being deleted because of the increased security requirements caused by Treasury's proximity to the White House.

These regulations are being published as a final rule because the amendments do not impose any requirements on any member of the public and do not alter the procedures relating to the way in which the Departmental Offices currently handle FOIA and PA obligations. These amendments are the most efficient means for the Treasury Department to implement its internal requirements for complying with the FOIA and the Privacy Act. Accordingly, pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Department of the Treasury finds good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary and finds good cause for making this rule effective on the date of publication in the **Federal Register.**

In accordance with Executive Order 12866, it has been determined that this final rule is not a ''significant regulatory action'' and, therefore, does not require a Regulatory Impact Analysis.

The regulation 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, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

List of Subjects in 31 CFR Part 1

Freedom of Information; Privacy.

■ Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

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

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also is issued under 5 U.S.C. 552, as amended. Subpart C also is issued under 5 U.S.C. 552a.

Subpart A—Freedom of Information Act

■ 2. In § 1.1 revise paragraph (a) to read as follows:

§ 1.1 General.

(a) Purpose and scope. (1) This subpart contains the regulations of the Department of the Treasury implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996. The regulations set forth procedures for requesting access to records maintained by the Department of the Treasury. These regulations apply to all components of the Department of the Treasury. Any reference in this subpart to the Department or its officials, employees, or records shall be deemed to refer also to the components or their officials, employees, or records. Persons interested in the records of a particular component should also consult the appendix to this subpart that pertains to that component. In connection with such republication, and at other appropriate times, components may issue supplementary regulations applicable only to the component in question, which are consistent with these regulations. In the event of any actual or apparent inconsistency, these Departmental regulations shall govern. Persons interested in the records of a particular component should, therefore, also consult the Code of Federal Regulations for any rules or regulations promulgated specifically with respect to that component (see Appendices to this subpart for cross references). The head of each component is hereby authorized to substitute the officials designated and change the addresses specified in the appendix to this subpart applicable to the components. The components of the Department of the Treasury for the purposes of this subpart are the following offices and bureaus:

(i) The Departmental Offices, which include the offices of:

(A) The Secretary of the Treasury, including immediate staff;

(B) The Deputy Secretary of the Treasury, including immediate staff;

(C) The Chief of Staff, including immediate staff;

(D) The Executive Secretary of the Treasury and all offices reporting to such official, including immediate staff;

(E) Under Secretary (International Affairs) and all offices reporting to such official, including immediate staff;

(F) Assistant Secretary (International Economics and Development) and all offices reporting to such official, including immediate staff;

(G) Assistant Secretary (Financial Markets and Investment Policy) and all offices reporting to such official, including immediate staff;

(H) Under Secretary (Domestic Finance) and all offices reporting to such official, including immediate staff;

(I) Fiscal Assistant Secretary and all offices reporting to such official, including immediate staff;

(J) Assistant Secretary (Financial Institutions) and all offices reporting to such official, including immediate staff;

(K) Assistant Secretary (Financial Markets) and all offices reporting to such official, including immediate staff;

(L) Assistant Secretary (Financial Stability) and all offices reporting to such official, including immediate staff;

(M) Under Secretary (Terrorism & Financial Intelligence) and all offices reporting to such official, including immediate staff;

(N) Assistant Secretary (Terrorist Financing) and all offices reporting to such official, including immediate staff;

(O) Assistant Secretary (Intelligence and Analysis) and all offices reporting to such official, including immediate staff;

(P) General Counsel and all offices reporting to such official, including immediate staff; except legal counsel to the components listed in paragraphs (a)(1)(i)(W), (a)(1)(i)(X), (a)(1)(i)(Y), and (a)(1)(ii) through (x) of this section;

(Q) Treasurer of the United States including immediate staff;

(R) Assistant Secretary (Legislative Affairs) and all offices reporting to such official, including immediate staff;

(S) Assistant Secretary (Public Affairs) and all offices reporting to such official, including immediate staff;

(T) Assistant Secretary (Economic Policy) and all offices reporting to such official, including immediate staff;

(U) Assistant Secretary (Tax Policy) and all offices reporting to such official, including immediate staff;

(V) Assistant Secretary (Management) and Chief Financial Officer, and all offices reporting to such official, including immediate staff;

(W) The Inspector General, and all offices reporting to such official, including immediate staff;

(X) The Treasury Inspector General for Tax Administration, and all offices reporting to such official, including immediate staff;

(Y) The Special Inspector General for the Troubled Asset Relief Program, and all offices reporting to such official, including immediate staff;

(ii) Alcohol and Tobacco Tax and Trade Bureau.

(iii) Bureau of Public Debt.

(iv) Financial Management Service.

(v) Internal Revenue Service.

(vi) Comptroller of the Currency.

(vii) Office of Thrift Supervision.

(viii) Bureau of Engraving and Printing.

(ix) United States Mint.

(x) Financial Crimes Enforcement Network.

(2) For purposes of this subpart, the office of the legal counsel for the components listed in paragraphs (a)(1)(i)(W), (a)(1)(i)(X), (1)(i)(Y) and (a)(1)(ii) through (x) of this section, are to be considered a part of their respective component. Any office which is now in existence or may hereafter be established, which is not specifically listed or known to be a component of any of those listed above, shall be deemed a part of the Departmental Offices for the purpose of these regulations.

* * * * *

■ 3. Appendix A to Subpart A of Part 1 is amended as follows:

■ a. In the third paragraph, remove the word ''Assistant'' from the second sentence.

■ b. In paragraph 4.(i), add the phrase ''Special Inspector General for Troubled Assets Relief Program,'' after the words ''Treasury Inspector General for Tax Administration,'' and before the words ''Treasurer of the United States,''

■ c. In paragraph 4.(ii), by removing ''Deputy Assistant Secretary (Administration),'' and add in its place ''Deputy Assistant Secretary for Privacy and Treasury Records.''

■ d. In paragraph 4. (iii) remove the word ''Assistant''.

Subpart C—Privacy Act

■ 4. In § 1.20, revise the section heading, introductory text, and paragraphs (a) through (j) to read as follows:

§ 1.20 Purpose and scope of regulation.

The regulations in this subpart are issued to implement the provisions of the Privacy Act of 1974 (5 U.S.C. 552a). The regulations apply to all records which are contained in systems of records maintained by the Department of the Treasury and which are retrieved by an individual's name or personal identifier. They do not relate to those personnel records of Government employees, which are under the jurisdiction of the Office of Personnel Management to the extent such records are subject to regulations issued by such OPM. The regulations apply to all components of the Department of the Treasury. Any reference in this subpart to the Department or its officials, employees, or records shall be deemed to refer also to the components or their officials, employees, or records. The regulations set forth the requirements applicable to Department of the Treasury employees maintaining, collecting, using or disseminating

records pertaining to individuals. They also set forth the procedures by which individuals may request notification of whether the Department of the Treasury maintains or has disclosed a record pertaining to them or may seek access to such records maintained in any nonexempt system of records, request correction of such records, appeal any initial adverse determination of any request for amendment, or may seek an accounting of disclosures of such records. For the convenience of interested persons, the components of the Department of the Treasury may reprint these regulations in their entirety (less any appendices not applicable to the component in question) in those titles of the Code of Federal Regulations which normally contain regulations applicable to such components. In connection with such republication, and at other appropriate times, components may issue supplementary regulations applicable only to the component in question, which are consistent with these regulations. In the event of any actual or apparent inconsistency, these Departmental regulations shall govern. Persons interested in the records of a particular component should, therefore, also consult the Code of Federal Regulations for any rules or regulations promulgated specifically with respect to that component (see Appendices to this subpart for cross references). The head of each component is hereby also authorized to substitute other appropriate officials for those designated and correct addresses specified in the appendix to this subpart applicable to the component. The components of the Department of the Treasury for the purposes of this subpart are the following offices and bureaus:

(a) The Departmental Offices, which include the offices of:

(1) The Secretary of the Treasury, including immediate staff;

(2) The Deputy Secretary of the Treasury, including immediate staff;

(3) The Chief of Staff, including immediate staff;

(4) The Executive Secretary of the Treasury and all offices reporting to such official, including immediate staff;

(5) Under Secretary (International Affairs) and all offices reporting to such official, including immediate staff;

(6) Assistant Secretary (International Economics and Development) and all offices reporting to such official, including immediate staff;

(7) Assistant Secretary (Financial Markets and Investment Policy) and all offices reporting to such official, including immediate staff;

(8) Under Secretary (Domestic Finance) and all offices reporting to such official, including immediate staff;

(9) Fiscal Assistant Secretary and all offices reporting to such official, including immediate staff;

(10) Assistant Secretary (Financial Institutions) and all offices reporting to such official, including immediate staff;

(11) Assistant Secretary (Financial Markets) and all offices reporting to such official, including immediate staff;

(12) Assistant Secretary (Financial Stability) and all offices reporting to such official, including immediate staff;

(13) Under Secretary (Terrorism & Financial Intelligence) and all offices reporting to such official, including immediate staff;

(14) Assistant Secretary (Terrorist Financing) and all offices reporting to such official, including immediate staff;

(15) Assistant Secretary (Intelligence and Analysis) and all offices reporting to such official, including immediate staff;

(16) General Counsel and all offices reporting to such official, including immediate staff; except legal counsel to the components listed in paragraphs (a)(23), (a)(24), and (a)(25) and (b) through (j) of this section;

(17) Treasurer of the United States including immediate staff;

(18) Assistant Secretary (Legislative Affairs) and all offices reporting to such official, including immediate staff;

(19) Assistant Secretary (Public Affairs) and all offices reporting to such official, including immediate staff;

(20) Assistant Secretary (Economic Policy) and all offices reporting to such official, including immediate staff;

(21) Assistant Secretary (Tax Policy) and all offices reporting to such official, including immediate staff;

(22) Assistant Secretary (Management) and Chief Financial Officer, and all offices reporting to such official, including immediate staff;

(23) The Inspector General, and all offices reporting to such official, including immediate staff;

(24) The Treasury Inspector General for Tax Administration, and all offices reporting to such official, including immediate staff;

(25) The Special Inspector General for the Troubled Asset Relief Program, and all offices reporting to such official, including immediate staff;

(b) Alcohol and Tobacco Tax and Trade Bureau.

(c) Bureau of Public Debt.

(d) Financial Management Service.

(e) Internal Revenue Service.

(f) Comptroller of the Currency.

(g) Office of Thrift Supervision.

(h) Bureau of Engraving and Printing.

(i) United States Mint.

(j) Financial Crimes Enforcement Network. For purposes of this subpart, the office of the legal counsel for the components listed in paragraphs (a)(23), (a)(24), (a)(25), (b) through (j) of this section are to be considered a part of such components. Any office, which is now in existence or may hereafter be established, which is not specifically listed or known to be a component of any of those listed above, shall be deemed a part of the Departmental Offices for the purpose of these regulations.

* * * * *

§ 1.36 [Amended]

■ 5. In § 1.36, paragraph (g)(1)(viii) is amended by removing ''IRS 42.012–Combined Case Control File'' from the table.

■ 6. Appendix A to Subpart C of Part 1 is amended by: Departmental Offices:

■ a. In the second paragraph, by adding ''Director, Disclosure Services'' after the words ''Privacy Act Request, DO'' and before the words ''Department of the Treasury,'' and by removing the last sentence.

■ b. In the third paragraph, by adding ''Director, Disclosure Services'' after ''DO,'' and before the words ''Department of the Treasury'' in the last sentence of the paragraph.

■ c. In the fourth paragraph, by adding ''Special Inspector General for Troubled Assets Relief Program,'' after ''General Counsel,'' and before the words ''or Assistant Secretary,'' and by adding ''Director, Disclosure Services'' after the words ''Privacy Act Amendment Request,'' and before the words ''Department of the Treasury,'' and by removing the last sentence.

Dated: December 24, 2009.

Melissa Hartman,

Acting Deputy Assistant Secretary for Privacy and Treasury Records.

[FR Doc. E9–31150 Filed 1–5–10; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 285

RIN 1510–AB20

Offset of Tax Refund Payments To Collect Past-Due, Legally Enforceable Nontax Debt; Correction

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: The Department of the Treasury, Financial Management Service published a document in the **Federal Register** on Monday, December 28, 2009. That document inadvertently contained incorrect dates in the rule. This document corrects those dates.

DATES: Effective on January 4, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas Dungan, Senior Policy Analyst, at (202) 874–6660, or Tricia Long, Senior Counsel, at (202) 874–6680.

SUPPLEMENTARY INFORMATION: The Department of the Treasury, Financial Management Service published a document in the **Federal Register** on Monday, December 28, 2009 (74 FR 68537). That document inadvertently contained incorrect dates in the rule. This document corrects the dates set forth in paragraph (d)(6) of § 285.2.

List of Subjects in 31 CFR Part 285

Administrative practice and procedure, Black lung benefits, Child support, Claims, Credit, Debts, Disability benefits, Federal employees, Garnishment of wages, Hearing and appeal procedures, Loan programs, Privacy, Railroad retirement, Railroad unemployment insurance, Salaries, Social Security benefits, Supplemental Security Income (SSI), Taxes, Veteran's benefits, Wages.

■ Accordingly, 31 CFR part 285 is corrected by making the following correcting amendment:

PART 285—DEBT COLLECTION AUTHORITIES UNDER THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

■ 1. The authority citation for part 285 continues to read as follows:

Authority: 5 U.S.C. 5514; 26 U.S.C. 6402; 31 U.S.C. 321, 3701, 3711, 3716, 3719, 3720A, 3720B, 3720D; 42 U.S.C. 664; E.O. 13019, 61 FR 51763, 3 CFR, 1996 Comp., p. 216.

§ 285.2 [Corrected]

■ 2. In § 285.2, remove ''January 27, 2010'' wherever it appears, and add, in its place, ''December 28, 2009''.

Dated: January 4, 2010.

David A. Lebryk,

Commissioner, Financial Management Service.

[FR Doc. 2010–20 Filed 1–4–10; 4:15 pm]

BILLING CODE 4810–35–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 724

[No. USN–2008–0009]

RIN 0703–AA86

Naval Discharge Review Board

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy amends its rules under 32 CFR Part 724 to reflect the name change of the Naval Council of Personnel Boards to the Secretary of the Navy Council of Review Boards and to update other administrative information pertaining to the Naval Discharge Review Board.

DATES: This rule is effective January 6, 2010.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Tanya M. Cruz, JAGC, U.S. Navy, Office of the Judge Advocate General (Administrative Law), Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone: 703–614–7403.

SUPPLEMENTARY INFORMATION: The Department of the Navy published a proposed rule at 74 FR 31222 on June 30, 2009, amending 32 CFR Part 724 to reflect the name change of the Naval Council of Personnel Boards to the Secretary of the Navy Council of Review Boards and to update other administrative information pertaining to the Naval Discharge Review Board, including the administration and management of Naval Discharge Review Board (NDRB) Panels within the National Capital Region (NCR) and other selected sites. Comments were submitted on the proposed rule.

Analysis of Comments and Changes

Comment. A commentator expressed disagreement with the determination that the proposed changes do not constitute significant regulatory action, stating that the proposed rule impacts due process rights pertaining to the NDRB. The Department disagrees with this comment. The proposed rule does not restrict any qualified applicant from requesting the NDRB to conduct a review of a discharge from the naval service. The proposed rule amends applicable regulations for purposes of clarifying the administration and management of the NDRB Panels within the NCR and other selected sites. In addition, the proposed rule updates administrative information relating to the Secretary of the Navy Council of Review Boards and the NDRB. The proposed rule does not meet requirements under Executive Order 12866, ''Regulatory Planning and Review,'' to be considered a significant regulatory action.

Comment. A commentator disagreed with the proposed changes to 32 CFR Parts 724.221, 724.222, 724.501, and 724.601, stating that the proposed changes impair the possibility of traveling boards. The Department disagrees with this interpretation of the proposed changes. The proposed rule amends applicable regulations for purposes of clarifying the administration and management of NDRB Panels within the NCR and other selected sites. The current regulations provide for the NDRB Panels to travel to other selected sites within the contiguous 48 states as permitted by available resources. The current regulations also provide that the selection of sites and frequency of visits shall be predicated on the number of requests pending within a region. The proposed rule is consistent with applicable regulations and does not eliminate the right to appear before the NDRB. However, upon further consideration, the Department has decided not to adopt the changes as proposed regarding NDRB traveling panels under 32 CFR Parts 724.221, 724.222, 724.501 and 724.601.

Comment. A commentator sought clarification under 32 CFR Part 724.504, regarding the text ''if required;'' specifically, whether this text was intended to modify ''health record,'' or ''health record'' and ''service record.'' The proposed change only pertains to medical records. For purposes of clarity, the text ''if required'' has been inserted before the words ''health records'' in the final rule.

The written comments received were fully considered in making the final amendments to 32 CFR Part 724. It has been determined that this final rule amendment is not a major rule within the criteria specified in Executive Order 12866, as amended by Executive Order 13258, and does not have substantial impact on the public.

Matters of Regulatory Procedure

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that 32 CFR Part 724 is not a significant regulatory action. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the

environment, public health or safety, or state, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of the recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)

It has been certified that 32 CFR Part 724 does not contain a Federal Mandate that may result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–511. ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been certified that 32 CFR Part 724 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Federalism (Executive Order 13132)

It has been certified that 32 CFR Part 724 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(1) The States;

(2) The relationship between the National Government and the States; or

(3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 724

Administrative practice and procedure, Archives and records, and Military personnel.

■ For the reasons set forth in the preamble, the Department of the Navy amends 32 CFR Part 724 as follows:

PART 724—NAVAL DISCHARGE REVIEW BOARD

■ 1. The authority citation for Part 724 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. 1553.

■ 2. Section 724.116 is amended by revising the section heading to read as follows:

§ 724.116 Counsel/Representative.

* * * * *

§ 724.118 [Amended]

■ 3. Section 724.118 is amended by removing ''and medical'' in the second sentence.

■ 4. Section 724.201 is revised to read as follows:

§ 724.201 Authority.

The Naval Discharge Review Board, established pursuant to 10 U.S.C. 1553, is a component of the Secretary of the Navy Council of Review Boards. On December 6, 2004, the Assistant Secretary of the Navy (Manpower & Reserve Affairs) approved the change in name from Naval Council of Personnel Boards to Secretary of the Navy Council of Review Boards. By SECNAVINST 5730.7 series, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) is authorized and directed to act for the Secretary of the Navy within his/her assigned area of responsibility and exercises oversight over the Secretary of the Naval Council of Review Boards. SECNAVINST 5420.135 series states the organization, mission, duties and responsibilities of the Secretary of the Naval Council of Review Boards to include the Naval Discharge Review Board. The Chief of Naval Operations established the Office of Naval Disability Evaluation and the Navy Council of Personnel Boards on 1 October 1976 (OPNAVNOTE 5450 Ser 09b26/535376 of 9 Sep 1976 (Canc frp: Apr 77)). The Chief of Naval Operations approved the change in name of the Office of Naval Disability Evaluation and Navy Council of Personnel Boards to Naval Council of Personnel Boards on 1 February 1977 (OPNAVNOTE 5450 Ser 099b26/32648 of 24 Jan 1977 (Canc frp: Jul 77)) with the following mission Statement:

To administer and supervise assigned boards and councils.

§ 724.223 [Amended]

■ 5. Section 724.223 is amended in paragraph (d) by removing ''NCPB'' and adding ''NDRB'' in its place.

Subpart C—Director, Secretary of the Navy Council of Review Boards and President Naval Discharge Review Board; Responsibilities in Support of the Naval Discharge Review Board

■ 6. The Subpart C heading is revised to read as set forth above.

■ 7. Section 724.302 is amended as follows:

■ a. The section heading is revised to read as set forth below; and

■ b. Paragraph (h) is amended by removing ''Naval Council of Personnel Boards'' and adding ''Secretary of the Navy Council of Review Boards'' in its place.

§ 724.302 Functions: Director, Secretary of the Navy Council of Review Boards.

* * * * *

§ 724.303 [Amended]

■ 8. Section 724.303 is amended in paragraph (e) by removing ''5211.5C'' and adding ''5211.5 series'' in its place.

§ 724.501 [Amended]

■ 9. Section 724.501 is amended in paragraph (e) by removing ''withdrawn'' and adding ''withdraw'' in its place.

§ 724.502 [Amended]

■ 10. Section 724.502 is amended as follows:

■ a. Paragraph (c) is amended by removing ''Suite 905—801 North Randolph Street, Arlington, VA 22203'' and adding ''720 Kennon Ave SE., Suite 309, Washington, DC 20374–5023'' in its place; and

■ b. Paragraph (d) is amended by removing ''696–4881'' and adding ''685–6600'' in its place.

§ 724.504 [Amended]

■ 11. Section 724.504 is amended in paragraph (a) by adding '', if required,'' prior to ''health record.''

§ 724.601 [Amended]

■ 12. Section 724.601 is amended by removing ''Naval Council of Personnel Boards'' and adding ''Secretary of the Navy Council of Review Boards'' in its place.

■ 13. Section 724.701 is amended as follows:

■ a. The introductory text is amended by removing ''Naval Council of Personnel Boards'' and adding ''Secretary of the Navy Council of Review Boards'' in its place; and

■ b. Paragraph (c) is revised to read as follows:

§ 724.701 Composition.

* * * * *

(c) Normally, at least three of the five members of the NDRB shall belong to the service from which the applicant whose case is under review was discharged.

* * * * *

■ 14. Section 724.703 is revised to read as follows:

§ 724.703 Legal counsel.

Normally, the NDRB shall function without the immediate attendance of legal counsel. In the event that a legal advisory opinion is deemed appropriate by the NDRB, such opinion shall be obtained routinely by reference to the

Counsel assigned to the Office of the Director, Secretary of the Navy Council of Review Boards. In addition, the NDRB may request advisory opinions from staff offices of the Department of the Navy, including, but not limited to the General Counsel and the Judge Advocate General.

Dated: December 28, 2009.

A.M. Vallandingham,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. E9–31231 Filed 1–5–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2009–0430]

RIN 1625–AA08

Special Local Regulation for Marine Events; Recurring Marine Events in the Fifth Coast Guard District

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the list of recurring marine events within the Fifth Coast Guard District. These regulations make minor changes to the regulated areas of two permitted marine events listed in the table attached to the regulation. These special local regulations are necessary to provide for the safety of life on navigable waters during marine events. This action will restrict vessel traffic in portions of the Chesapeake Bay and Assateague Channel, Virginia.

DATES: This rule is effective February 5, 2010.

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–2009–0430 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0430 in the ''Keyword'' box, and then clicking ''Search.'' 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 rule, call or e-mail Dennis Sens, Project Manager, Fifth Coast Guard District, Prevention Division, 757–398–6204 or e-mail *Dennis.M.Sens@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 June 25, 2009, we published an Interim final rule; request for comments entitled Special Local Regulation for Marine Events; Recurring Marine Events in the Fifth Coast Guard District in the **Federal Register** (74 FR 30220). We received no comments on the interim final rule. No public meeting was requested and none was held.

Background and Purpose

Marine events are frequently held on the navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

This regulation amends two marine events listed in 33 CFR Part 100.501, Table to § 100.501. They are event No. 20, The Great Chesapeake Bay Bridges Swim Races and Chesapeake Challenge One Mile Swim and event No. 42, Pony Penning Swim.

Annually, the Great Chesapeake Bay Swim, Inc. sponsors the ''The Great Chesapeake Bay Bridges Swim Races and Chesapeake Challenge One Mile Swim'' on the waters of the Chesapeake Bay near the William P. Lane Jr. Memorial (Chesapeake Bay) Bridge. The regulated area is a line that runs parallel to both the north and south spans of the bridge and includes the waters 500 yards north of the north span and 500 yards south of the south span of the bridge. The regulated area listed in the Table to § 100.501 for event No. 20 is amended to describe the area as follows: The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge shore to shore 500 yards north of the north span of the bridge from the western shore at latitude 39°00′36″ N, longitude 076°23'53'' W and the eastern shore at latitude 38°59′14″ N, longitude 076°20′00″ W; and 500 yards south of the south span of the bridge from the western shore at latitude 39°00′16″ N, longitude 076°24′30″ W and the eastern shore at latitude 38°58′39″ N, longitude 076°20′10″ W. The regulated area as described is amended to ensure the safety of participants and support vessels and in accordance with 33 CFR 100.501 will be enforced for the duration of the marine event. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted in this segment of the Chesapeake Bay. Under provisions of 33 CFR 100.501, during the enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander. Vessel traffic may be allowed to transit the regulated area only when the Patrol Commander determines it is safe to do so.

Annually, the Chincoteague Volunteer Fire Department sponsors the ''The Pony Penning Swim'' on the waters of Assateague Channel that runs between Chincoteague and Assateague Islands. The regulated area includes the waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55′00″ N, longitude 075°22′45″ W, to latitude 37°54′47″ N, longitude 075°22′45″ W, and to the south by a line drawn from latitude 37°54′47″ N, longitude 075°22′45″ W, to latitude 37°54′47″ N, longitude 075°23′04″ W. The regulated area as described, is amended to ensure the safety of participants, wildlife and support vessels, and in accordance with 33 CFR 100.501 will be enforced for the duration of the marine event. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted in this segment of Assateague Channel. Vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

Specific information on each event, including the exact dates, times and description of the regulated area, will be provided to the public through a Local Notice to Mariners published before the event, as well as through Broadcast Notice to Mariners. The public will also be notified about these marine events by local newspapers, radio and television stations. The various methods of notification provided by the Coast Guard and local community media outlets will facilitate informing mariners so they can adjust their plans accordingly.

Discussion of Comments and Changes

The Coast Guard did not receive any comments in response to the interim rule published in the Federal Register. Accordingly, the Coast Guard is establishing as permanent the interim rule modifying the special local regulations on the specified waters of the Chesapeake Bay and Assateague Channel, Virginia.

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.

Although this rule prevents traffic from transiting a portion of certain waterways during specified events, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via marine information broadcasts, local radio stations and area newspapers so mariners can adjust their plans accordingly. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the areas where marine events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during marine events that have been permitted by the Coast Guard Captain of the Port. The Captain of the Port will ensure that small entities are able to operate in the areas where events are occurring when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the Interim final rule 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 (adjusted for inflation) 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)(h), of the Instruction. This rule involves implementation of regulations within 33 CFR Part 100 that apply to organized marine events on the navigable waters of the United States that may have potential for negative impact on the safety or other interest of waterway users and shore side activities in the event area. The category of water activities includes but is not limited to sail boat regattas, boat parades, power boat racing, swimming events, crew racing, and sail board racing.

Under figure 2–1, paragraph (34)(h), 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 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

Authority: 33 U.S.C. 1233.

■ 2. In § 100.501, in the Table to § 100.501, revise number 20 and number 42 to read as follows:

§ 100.501 Special local regulations; Marine events in the fifth Coast Guard district.

* * * * *

TABLE TO § 100.501

[All coordinates listed in the Table to § 100.501 reference Datum NAD 1983]

Number	Date	Event	Sponsor	Location
Coast Guard Sector Baltimore—COTP Zone				
*	*	*	*	* * *
20	June—2nd Sunday.	The Great Chesapeake Bay Bridge Swim Races and Chesapeake Challenge One Mile Swim.	Great Chesapeake Bay Swim, Inc.	The waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge shore to shore 500 yards north of the north span of the bridge from the western shore at latitude 39°00′36″ N, longitude 076°23′53″ W and the eastern shore at latitude 38°59′14″ N, longitude 076°20′00″ W, and 500 yards south of the south span of the bridge from the western shore at latitude 39°00′16″ N, longitude 076°24′30″ W and the eastern shore at latitude 38°58′39″ N, longitude 076°20′10″ W.
*	*	*	*	* * *
Coast Guard Sector Hampton Roads—COTP Zone				
*	*	*	*	* * *
42	July—last Wednesday and following Friday.	Pony Penning Swim.	Chincoteague Volunteer Fire Department.	The waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55′00″ N, longitude 075°22′45″ W, to latitude 37°54′47″ N, longitude 075°22′45″ W, and to the south by a line drawn from latitude 37°54′47″ N, longitude 075°22′45″ W, to latitude 37°54′47″ N, longitude 075°23′04″ W.

* * * * *

Dated: December 17, 2009.

Wayne E. Justice,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. E9–31410 Filed 1–5–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 138

[Docket No. USCG–2008–0007]

RIN 1625–AB25

Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels and Deepwater Ports

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting, as a final rule, without change, an interim rule published on July 1, 2009. The interim rule increased the limits of liability that apply under the Oil Pollution Act of 1990 (OPA 90) to vessels and to deepwater ports subject to the Deepwater Port Act of 1974, to reflect significant increases in the Consumer Price Index (CPI). The interim rule also established the methodology the Coast Guard uses to adjust the OPA 90 limits of liability for inflation, and made minor regulatory

amendments to clarify applicability of the OPA 90 single-hull tank vessel limits of liability.

DATES: This final rule is effective February 5, 2010. As discussed in the interim rule published on July 1, 2009, at 74 FR 31358, to the extent this rulemaking affects the collection of information in 33 CFR 138.85, the Coast Guard will not enforce the information collection request until it is approved by the Office of Management and Budget (OMB).

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket for this rulemaking, are part of Docket No. USCG–2008–0007 and are 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 view the docket for this rulemaking on the Internet by going to *http://www.regulations.gov,* inserting USCG–2008–0007 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rulemaking, call or e-mail Benjamin White, National Pollution Funds Center, Coast Guard; telephone 202–493–6863, e-mail *Benjamin.H.White@uscg.mil.* If you have questions on viewing the docket for this rulemaking, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

CFR Code of Federal Regulations
COFR Certificate of Financial Responsibility
CPI Consumer Price Index
CPI NPRM The notice of proposed rulemaking published on September 24, 2008, titled ''Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels and Deepwater Ports'' (73 FR 54997)
CPI–U Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982–84=100
Deepwater Port A deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501–1524)
DHS U.S. Department of Homeland Security
FR **Federal Register**
Fund Oil Spill Liability Trust Fund
Interim Rule The interim rule for this rulemaking, published on July 1, 2009, titled ''Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels and Deepwater Ports'' (74 FR 31357)
OMB Office of Management and Budget
OPA 90 The Oil Pollution Act of 1990, as amended (Title I of which is codified at 33 U.S.C. 2701, et seq.; Title IV of which is codified in relevant part at 46 U.S.C. 3703a)
§ Section symbol
U.S.C. United States Code

II. Regulatory History

On September 24, 2008, the Coast Guard published a notice of proposed rulemaking in the **Federal Register**, at 73 FR 54997, entitled ''Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability—Vessels and Deepwater Ports'' (CPI NPRM). The CPI NPRM proposed to adjust the Oil Pollution Act of 1990, as amended (OPA 90), limits of liability set forth at 33 CFR part 138, subpart B, for vessels and for deepwater ports licensed under the Deepwater Port Act of 1974, as amended (33 U.S.C. 1501–1524) (hereinafter ''Deepwater Ports''), as required by 33 U.S.C. 2704(d), to reflect significant increases in the Consumer Price Index (CPI). The CPI NPRM also proposed a methodology for calculating and implementing the proposed and future mandated OPA 90 limit of liability inflation adjustments.

On July 1, 2009, we published the Interim Rule, at 74 FR 31357, responding to public comments submitted on the CPI NPRM, adjusting the OPA 90 limits of liability as proposed, and establishing the methodology for adjusting the limits of liability. In addition, in response to a public comment, the Interim Rule made minor amendments to clarify the applicability of the single-hull tank vessel limits of liability, and solicited additional public comment on this clarification.

In the docket for this rulemaking, we received two letters containing a total of seven comments on the Interim Rule. We also received a non-public oral comment on the Interim Rule, which we have summarized in a memo to the docket. These comments are discussed in part IV, below.

No public meeting was requested at either the CPI NPRM or Interim Rule stages of this rulemaking, and none was held. All comments and other materials related to this rulemaking have been placed in the public docket for this rulemaking (Docket No. USCG–2008–0007).

For further discussion of the regulatory history for this rulemaking, see the Interim Rule. That document is available in the docket for this rulemaking.

III. Background

In general under Title I of OPA 90, the responsible parties for a vessel or facility which discharges, or poses a substantial threat of discharge of, oil into or upon United States navigable waters, adjoining shorelines or the exclusive economic zone, are liable for the OPA 90 removal costs and damages that result from such incident. (33 U.S.C. 2702(a).) The responsible parties' total liability for OPA 90 removal costs and damages is, however, limited under certain circumstances, as provided in 33 U.S.C. 2704, to the applicable limit of liability amounts set forth at 33 CFR part 138, subpart B.

In instances when the liability limits apply, the Oil Spill Liability Trust Fund (Fund) is available to compensate the excess OPA 90 removal costs and damages. (See 33 U.S.C. 2708, 2712(a)(4), and 2713; and 33 CFR part 136.) Therefore, to prevent the real value of the OPA 90 limits of liability from depreciating over time as a result of inflation and preserve the polluter-pays principle embodied in OPA 90, OPA 90 requires that the President periodically adjust the limits of liability, by regulation, to reflect significant increases in the CPI. (See 33 U.S.C. 2704(d)(4).)

On September 24, 2008, in accordance with this mandate and further delegations to the Coast Guard, we proposed to adjust the OPA 90 limits of liability for vessels and Deepwater Ports in 33 CFR part 138, subpart B, for inflation, and to establish the methodology for the proposed and future mandated OPA 90 limit of liability inflation adjustments. (CPI NPRM, 73 FR 54997.)

During the public comment period for the CPI NPRM, the Coast Guard vessel certification program received a question asking what applicable amounts of OPA 90 financial

responsibility apply under the Certificate of Financial Responsibility (COFR) program regulations, at 33 CFR part 138, subpart A, to single-hull tank vessels that do not carry oil as cargo. As explained further in the Interim Rule, it was not until after the comment period for the CPI NPRM closed that we determined the question raised a substantive issue concerning applicability of the single-hull tank vessel limits of liability amended by this rulemaking. The question was, therefore, submitted as a comment to the public docket for this rulemaking after the close of the CPI NPRM comment period.

To avoid delaying the required inflation adjustments to the OPA 90 limits of liability, we published the Interim Rule, at 74 FR 31357, instead of a final rule. This permitted us to receive additional public comment on the single-hull tank vessel limit of liability applicability issue before issuing a final rule. The Interim Rule increased the OPA 90 limits of liability for vessels and Deepwater Ports, effective July 31, 2009, to reflect significant increases in the CPI. In addition, the Interim Rule established the methodology the Coast Guard uses to adjust the OPA 90 limits of liability for inflation. Finally, the Interim Rule made minor amendments to §§ 138.220(b) and 138.230(a), clarifying that the OPA 90 single-hull tank vessel limits of liability only apply to single-hull tank vessels that are constructed or adapted to carry, or that carry, oil as cargo or cargo residue, and specifically invited public comment on this clarification.

For further discussion of the background for this rulemaking, see the preambles for the CPI NPRM and the Interim Rule. Both documents are available in the docket for this rulemaking.

IV. Discussion of Comments and Changes

Two letters with seven comments, and a memorandum summarizing one non-public oral comment related to the Interim Rule, were submitted to the docket for this rulemaking. The comments were generally supportive of this rulemaking and, as discussed below, none of the comments raised any issue that persuaded or convinced the Coast Guard to change the regulatory text published in the Interim Rule. This final rule, therefore, adopts the Interim Rule, at 74 FR 31357, without change.

An anonymous commenter expressed the view that fines ''oil profiteers'' have to pay for polluting should be raised by 1,000 percent. This comment is beyond the scope of this rulemaking. The primary purpose of this rulemaking is to implement the statutorily-mandated inflation increases to the OPA 90 limits of liability and to clarify their applicability. Any other increase to the limits of liability would have to be authorized by Congress. Moreover, the OPA 90 limits of liability only concern the liability of responsible parties under 33 U.S.C. 2702 for OPA 90 removal costs and damages. The OPA 90 limits of liability and 33 CFR part 138, subpart B, as amended by this rulemaking do not limit, or otherwise affect or concern, the amount of fines, penalties or other liability of responsible parties under other provisions of law.

An environmental organization supported increasing the limits of liability to reflect significant increases in the CPI, agreed with the Coast Guard's assessment that the statute does not allow for CPI-based reductions in the limits of liability, agreed with the process established to ensure future increases occur on a regular basis, and agreed with the procedure to immediately update limits as soon as the percentage target is reached if it does not occur at the 3 year interval. This commenter further stated that the threshold of 3 percent CPI increase over 3 years set forth in the Interim Rule is appropriate. The commenter, however, expressed the view that a lower percentage threshold should be considered by the Coast Guard (i.e., a 1% CPI increase over 3 years). In response to that comment, we considered whether a lower threshold should be adopted. We concluded, based on the entire historical record of annual changes in the CPI–U (the Consumer Price Index—All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items, 1982–84 = 100) going back to 1913, that a CPI increase threshold of 3 percent over 3 years will almost always result in future inflation adjustments to the OPA 90 limits of liability every 3 years, and is therefore adequate to protect against risk shifting to the Fund. We are, therefore, making no changes to the CPI increase threshold adopted in the Interim Rule in response to this comment.

The non-public oral comment, from a financial responsibility guarantor, expressed support for the minor amendments made by the Interim Rule, at §§ 138.220(b) and 138.230(a), to clarify that the single-hull tank vessel limits of liability only apply to single-hull tank vessels that are constructed or adapted to carry, or that carry, oil as cargo or cargo residue. The clarifying amendments are being adopted by this final rule without change.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

This final 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. OMB has not reviewed it under that Order. Public comments on the Interim Rule are summarized in Part IV of this preamble. We made no changes to the Interim Rule and we received no public comments that would alter our assessment of the impacts of the Interim Rule. As explained in Part IV, above, we are adopting the Interim Rule without change. We are, therefore, adopting the Regulatory Assessment prepared for the Interim Rule as final. See the ''Regulatory Planning and Review'' section of the Interim Rule for more information.

B. 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.

In the CPI NPRM and again in the Interim Rule, we certified under 5 U.S.C. 605(b) that the rule would not have a significant economic impact on a substantial number of small entities. We have found no additional data or information that would change our findings in this respect. We, therefore, adopt for this final rule, the certification of the Interim Rule, under 5 U.S.C. 605(b), that this rulemaking will not have a significant economic impact on a substantial number of small entities. See the ''Small Entities'' sections of the Interim Rule and the NPRM for additional information.

C. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), 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. 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.

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).

D. Collection of Information

As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collection, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Public comments on the Interim Rule are summarized in Part IV of this preamble, above. We received no public comments that would alter our assessment of the collection of information impacts in the Interim Rule. We have adopted the assessment in the Interim Rule as final. See the ''Collection of Information'' section of the Interim Rule in the public docket for this rulemaking (USCG–2008–0007).

OMB has not yet completed its review of this collection request titled ''Consumer Price Index Adjustments of Oil Pollution Act of 1990 Limits of Liability — Vessels and Deepwater Ports'' (OMB CONTROL NUMBER: 1625–0046). Therefore, the Coast Guard will not enforce the information collection requirement at 33 CFR 138.85 triggered by this rulemaking until its information collection request is approved by OMB. We will publish a document in the **Federal Register** informing the public of OMB's decision to approve, modify, or disapprove the collection.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

E. Federalism

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

F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the 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 (adjusted for inflation) 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.

G. 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.

H. 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.

I. 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.

J. 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.

K. 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.

L. Technical Standards

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the OMB, 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.

M. 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 (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 is categorically excluded under section 2.B.2, figure 2–1, paragraph (34)(a) of the Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the public docket for this rulemaking, where indicated above under **ADDRESSES**.

List of Subjects in 33 CFR Part 138

Hazardous materials transportation, Insurance, Limits of liability, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

For the reasons discussed in the preamble, the interim rule amending 33 CFR part 138, published at 74 FR 31368 on July 1, 2009, is adopted as a final rule without change.

Dated: December 30, 2009.

William R. Grawe,

Acting Director, National Pollution Funds Center, United States Coast Guard.

[FR Doc. E9–31349 Filed 1–5–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–1080]

RIN 1625–AA11, 1625–AA00

Safety Zone and Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule with request for comments.

SUMMARY: The Coast Guard is establishing both a safety zone and a Regulated Navigation Area (RNA) on the Chicago Sanitary and Ship Canal (CSSC) near Romeoville, IL. This temporary interim rule places navigational, environmental and operational restrictions on all vessels transiting the navigable waters located adjacent to and over the U.S. Army Corps of Engineers' (USACE) electrical dispersal fish barrier system.

DATES: *Effective Date:* In this rule, § 165.T09–1004 is removed, effective January 6, 2010. Section 165.923 is suspended, and a new temporary section, § 165.T09–1080, is added in the CFR effective January 6, 2010 until 5 p.m. on December 1, 2010. This rule is effective with actual notice for purposes of enforcement beginning at 5 p.m. on December 18, 2009.

Comment Date: Comments and related material must reach the Docket Management Facility on or before February 5, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–1080 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 methods. For instructions on submitting comments, see the ''Public Participation and Request for Comments.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216–902–6045. If you have questions on viewing 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–2009–1080), 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, or by fax, mail or hand delivery, but please use only one of these means. 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–2009–1080'' 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 them 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 this 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–2009–1080 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit either 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 one on or before January 29, 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.**

Regulatory Information

The Coast Guard is issuing this temporary interim 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.'' For the reasons discussed below, 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 based upon data which indicates that Asian carp are much closer to the Great Lakes waterway system than originally thought. The possibility exists that vessels will transport Asian carp eggs, gametes or juvenile fish safely through the electrical dispersal barrier in water attained south of the fish barrier that is then transported and discharged on the other side of the barrier. The Asian carp are the subject of an ongoing multi-agency study aimed at preventing their introduction into the great lakes. The proposed temporary safety zone and RNA will allow that multi-agency effort to progress towards its goal of protecting people, vessels, and the environment from the hazards associated with the

possible introduction of invasive species such as Asian carp into the Great Lakes.

As such, the USCG must take immediate steps in order to prevent possible introduction of Asian carp before the ongoing effort can be completed. Therefore, it would be against the public interest to delay the issuing of this rule. Additionally, for the same reasons, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** under 5 U.S.C. 553(d)(3).

RNA Good Cause Discussion

In 2002, the USACE energized a demonstration electrical dispersal barrier located in the CSSC. The demonstration barrier, commonly referred to as ''Barrier I,'' generates a low-voltage electric field (one-volt per inch) across the canal, which connects the Illinois River to Lake Michigan. Barrier I was built to block the passage of aquatic nuisance species, such as Asian carp, and prevent them from moving between the Mississippi River basin and Great Lakes via the canal. In 2006, the USACE completed construction of a new barrier, ''Barrier IIA.'' Because of its design, Barrier IIA can generate a more powerful electric field (up to four-volts per inch), over a larger area within the CSSC, than Barrier I. Testing was conducted by the USACE which indicated that two-volts per inch is the optimal voltage to deter aquatic nuisance species. The USACE's original plan was to perform testing on the effects of the increased voltage on vessels passing through the fish barrier prior to permanently increasing the voltage. However, after receiving data that the Asian carp were closer to the Great Lakes than expected, the decision was made to energize the barrier to two-volts per inch without prior testing.

A comprehensive, independent analysis of Barrier IIA, conducted in 2008 by the USACE at the one-volt per inch level, found a serious risk of injury or death to persons immersed in the water located adjacent to and over the barrier. Additionally, sparking between barges transiting the barrier (a risk to flammable cargoes) occurred at the one-volt per inch level. The Coast Guard and USACE developed regulations and safety guidelines, with stakeholder input, which addressed the risks and hazards associated with operating the barriers at the one-volt per inch level. These regulations were published in 33 CFR § 165.923, 70 FR 76692 (Dec 28, 2005) and in a series of temporary final rules published in the **Federal Register:** 71 FR 4488 (Jan 27, 2006); 71 FR 19648 (Apr 17, 2006); 73 FR 33337 (Jun 12, 2008); 73 FR 37810 (Jul 2, 2008); 73 FR 45875 (Aug 7, 2008); and 73 FR 63633 (Oct 27, 2008).

In early August, 2009, the USACE notified the Coast Guard that it planned to immediately increase the voltage of Barrier IIA to two-volts per inch on a full-time basis starting August 17, 2009. Both Barrier IIA and Barrier I will operate at the same time; hence, Barrier I will provide a redundant back-up to Barrier IIA.

In the past, the Coast Guard advised the USACE that it has no objection to the activation of Barrier IIA and Barrier I at a maximum strength of one-volt per inch. Testing on commercial vessels transiting the canal over the fish barrier was conducted at one volt per inch indicating that although the barriers create risks to people and vessels, those risks could be mitigated by following certain procedures. These mitigation procedures for the barrier operating at one volt per inch were implemented in a temporary interim rule establishing an RNA and a safety zone that was published in the **Federal Register** on February 9, 2009 (74 FR 6352), as well as an NPRM published in the **Federal Register** on May 26, 2009 (74 FR 24722).

However, both of these rulemakings reflected the prior operating parameters of the dispersal barriers and contemplated further testing of the effects of higher voltages on commercial and recreational vessels as well as people. The USACE began safety testing in consultation with the U.S. Coast Guard on August 17, 2009, to test various configurations of commercial tugs and barges as well as recreational vessels with non-conductive hulls passing through the barriers at increased voltage and operating parameters. Because the USACE decided that the voltage and operating parameters had to be immediately increased prior to the completion of safety testing, the USCG determined that temporary closure of the canal to all vessels through a safety zone was necessary until the risks were better understood. This resulted in successive temporary final rules that suspended the prior temporary interim rule. These temporary final rules enacting safety zones were published in the **Federal Register** on August 26, 2009 (74 FR 43055), September 2, 2009 (74 FR 45318), September 29, 2009 (74 FR 49815), and November 13, 2009 (74 FR 58545).

Testing and analysis of the risks to persons and vessels are ongoing. Until those risks are well understood, immediate action is needed to prevent injury to people and vessels from effects of Barrier IIA. As a result, it is contrary to the public interest to provide a full notice and comment period prior to implementation of, or to delay the effective date of, the RNA included in this rule.

Safety Zone Good Cause Discussion

In November 2009, the USACE made an announcement that it had discovered environmental deoxyribonucleic acid (e-dna) from Asian carp north of the fish barrier. This discovery indicates that Asian carp are living in the waterways north of the fish barrier in the Cal-Sag Channel but south of the O'Brien Locks. Under 50 CFR part 16, Asian carp are listed as an injurious species of fish and as such are illegal for interstate transportation. A permit is required to transport all viable eggs, gametes, as well as live Silver or Asian carp. Historically, vessels, including barges, have taken on water south of the barrier and transported it across the fish barriers, either knowingly or unknowingly, as bilge, ballast, or other non-potable water. This practice is considered a possible bypass vector for transporting Asian carp eggs or juvenile fish from south of the barrier to north of the barrier. Immediate action is needed to halt this practice, thereby closing down this possible bypass vector. For this reason, providing a full notice and comment period and delaying the effective date for the safety zone including in this temporary interim rule would be contrary to the public interest.

Background and Purpose

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act of 1996, authorized the USACE to conduct a demonstration project to identify an environmentally sound method for preventing and reducing the dispersal of non-indigenous aquatic nuisance species through the CSSC. The USACE selected an electric barrier because it is a non-lethal deterrent with a proven history, which does not overtly interfere with navigation in the canal.

A demonstration dispersal barrier (Barrier I) was constructed and has been in operation since April 2002. It is located approximately 30 miles from Lake Michigan and creates an electric field in the water by pulsing low voltage DC current through steel cables secured to the bottom of the canal. A second barrier, Barrier IIA, was constructed 800 to 1300 feet downstream of the Barrier I. The potential field strength for Barrier IIA is up to four times that of the Barrier I. Barrier IIA was successfully operated for the first time for approximately

seven weeks in September and October 2009, while Barrier I was taken down for maintenance. Construction on a third barrier (Barrier IIB) is planned; Barrier IIB would augment the capabilities of Barriers I and IIA.

In the spring of 2004, a commercial towboat operator reported an electrical arc between a wire rope and timberhead while making up a tow in the vicinity of Barrier I. During subsequent USACE safety testing, sparking was observed at points where metal-to-metal contact occurred between two barges in the barrier field.

The electric current in the water also poses a safety risk to commercial and recreational boaters transiting the area. The Navy Experimental Diving Unit (NEDU) was tasked with researching how the electric current from the barriers would affect a human body if immersed in the water. The NEDU final report concluded that the possible effects to a human body if immersed in the water include paralysis of body muscles, inability to breathe, and ventricular fibrillation.

A Safety Work Group facilitated by the Coast Guard and in partnership with the USACE and industry initially met in February 2008 and focused on three goals: (1) Education and public outreach, (2) keeping people out of the water, and (3) egress/rescue efforts. The Safety Work Group has regularly been attended by eleven stakeholders, including industry representatives such as the American Waterways Operators and Illinois River Carriers Association, the Army Corps of Engineers Chicago District, Coast Guard Marine Safety Unit Chicago, Coast Guard Sector Lake Michigan/Captain of the Port Lake Michigan, and the Ninth Coast Guard District.

Based on the safety hazards associated with electric current flowing through navigable waterways and the uncertainty of the effects of higher voltage on people and vessels that pass over and adjacent to the barriers, the Coast Guard is implementing operational restrictions, via an RNA, on vessels until proper testing and analysis of such testing can be completed by the USACE. The Coast Guard appreciates the commercial significance of this waterway and will work closely with the USACE to reduce operational restrictions as soon as possible; however, it is imperative that the RNA be immediately enacted to avoid loss of life.

On December 2, 2009, rotenone, a fish toxicant, was applied to approximately six miles of the CSSC while barrier maintenance was conducted to ensure no fish were able to transit the barrier. One Silver Carp was found in the area immediately south of the barrier. Similarly e-dna was detected north of the barrier, in an area of the Cal-Sag Channel immediately below the O'Brien Locks and at the confluence of the Cal-Sag Channel and the CSSC. This e-dna detects the presence of Carp, but in the subsequent fishing operations, we were not able to determine a number or mass of the fish present.

Affected parties are reminded that the USACE may again raise the operating parameters of the fish barrier in response to ongoing tests regarding the effectiveness of the barrier on the Asian carp. In addition, when USACE activates barrier IIB, additional testing will be necessary to ensure the safety of vessels. If this occurs, it is possible that fewer vessels will be given permission to enter the RNA and safety zone until further safety testing and analysis can be completed and current timelines for a final rule will be extended.

Discussion of Rule

This temporary interim rule removes 33 CFR 165.T09–1004, the last temporary rule published to address risks associated with Barrier IIA and the application of rotenone to the CSSC. This rule also suspends 33 CFR 165.923 until 5 p.m. on December 1, 2010. This rule places an RNA on all waters located adjacent to, and over, the electrical dispersal barriers on the CSSC between mile marker 295.0 (approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles northeast of the Romeo Road Bridge). It also places a safety zone over a smaller portion of these same waters. The RNA and safety zone will be enforced at all times until the USACE suspends operation of the electrified fish barrier and the Asian carp are no longer deemed an environmental threat to the Great Lakes. This temporary rule is to remain in effect until December 1, 2010 in order to allow sufficient time for the Coast Guard to publish a final rule based on comments received from the public in response to this temporary interim rule. At the same time, the Coast Guard expects the USACE to energize barrier IIB, which is likely to require additional safety testing. This RNA and safety zone are also required during that testing period to prevent the possible loss of life and damage to property.

The RNA encompasses all waters of the Chicago Sanitary and Ship Canal located between mile marker 295.0 (approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles northeast of the Romeo Road Bridge). The requirements placed on all vessels include: (1) Vessels must be greater than twenty feet in length; (2) Vessel must not be a personal watercraft of any kind (i.e., jet skis, wave runners, kayak, etc.); (3) All up-bound and down-bound commercial tows that consist of barges carrying flammable liquid cargos (grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) must engage the services of a bow boat at all times until the entire tow is clear of the RNA; (4) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the RNA and must make a SECURITE call when approaching the RNA to announce intentions and work out passing arrangements on either side; (5) Commercial tows transiting the RNA must only be made up with wire rope to ensure electrical connectivity between all segments of the tow; (6) All vessels are prohibited from loitering in the RNA; (7) Vessels may enter the RNA for the sole purpose of transiting to the other side and must maintain headway throughout the transit; (8) All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the RNA; (9) All personnel on vessels transiting the RNA should remain inside the cabin, or as inboard as practicable. If personnel must be on open decks, they must wear a Coast Guard approved personal flotation device; (10) Vessels may not moor or lay up on the right or left descending banks of the RNA; and, (11) Towboats may not make or break tows if any portion of the towboat or tow is located in the RNA.

This temporary final rule places additional restrictions on all vessels transiting a safety zone that encompasses a smaller portion of the CSSC. The safety zone consists of all the waters of the CSSC located between 270 feet south of the Romeo Road Bridge (mile marker 296.1) to the south side of the aerial pipeline (mile marker 296.7). Vessels are prohibited from transiting the safety zone with non-potable water on board in any space except for water on board that will not be discharged on the other side of the safety zone. Vessels must notify and obtain permission from the Captain of the Port Sector Lake Michigan prior to transiting the safety zone if they intend to discharge any non-potable water attained on one-side of the safety zone on the other side of the zone. This includes water in void spaces being unintentionally introduced through cracks or other damage to the hull. The Captain of the Port Sector Lake Michigan maintains a telephone

line that is manned 24 hours a day, seven days a week. The public can obtain information concerning information about the RNA and safety zone by contacting the Captain of the Port Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at 414–747–7182.

These restrictions are necessary for safe navigation of the RNA and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during safety tests conducted by the USACE. They are also necessary to protect from the harms presented by a potential invasion of Asian carp in Lake Michigan. Deviation from this temporary final rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representatives. The Commander, Ninth Coast Guard District designates Captain of the Port Sector Lake Michigan and Commanding Officer, Marine Safety Unit Chicago, as his designated representatives for the purposes of the RNA.

The Captain of the Port Sector Lake Michigan retains the authority to permit vessels to enter the safety zone. As safety testing results continue to be analyzed and become available, the Captain of the Port Sector Lake Michigan will make every effort to permit vessels to pass for which there is a decrease of known risk of injury or property damage. If vessels wish to enter the safety zone they must receive permission from the Captain of the Port Lake Michigan to do so and must follow all orders from the Captain of the Port Sector Lake Michigan or her designated representative while in the zone.

If, for any reason, the safety zone or RNA are at any time suspended, the Captain of the Port Lake Michigan will cause notice of the enforcement of the safety zone and/or RNA to be made by all appropriate means to effect the widest publicity among the affected segments of the public.

Regulatory Analyses

We developed this temporary interim 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.

Because this regulated navigation area and safety zone must be implemented immediately without a full notice and comment period, the full economic impact of this rule is difficult to determine at this time.

This rule will affect commercial traffic transiting the electrical dispersal fish barrier system and surrounding waters. The ACOE maintains data about the commercial vessels using the Lockport Lock and Dam, which provides access to the proposed RNA. According to ACOE data, the commercial traffic through the Lockport Lock consisted of 147 towing vessels and 13,411 barges during 2007. Of those, 96 towing vessels and 2,246 barges were handling red flag cargo (i.e., those carrying hazardous, flammable, or combustible material in bulk).

Recreational vessels will also be affected under this rule. According to ACOE data, recreational vessels made up 66 percent of the usage of the Lockport Lock and Dam in 2007. Operation and maintenance of the ACOE fish barrier will continue to affect recreational vessels as they have in the past. The majority of these vessels will still be able to transit the RNA under this rule. The potential cost associated with this rule will include bow boat assistance for red flag vessels and the potential cost associated with possible delays or inability to transit the RNA for those vessels transporting non-potable water attained on one side of the barrier for discharge on the other.

Operators have been using bow boat assistance, under prior temporary rules, to mitigate the risk posed by the electrical dispersal fish barrier system operated by ACOE. Based on information from the Ninth Coast Guard District, several tow boat operators are already refraining from permitting the discharge of non-potable water attained on one side of the barrier to the other.

We expect some provisions in this rule will not result in additional costs. These include loitering, mooring and PFD requirements. Similar to prior temporary rules, vessels are prohibited from mooring or loitering in the RNA and all personnel in the RNA on open decks are required to wear a Coast Guard approved Type I personal flotation device. Most commercial and recreational operators will have required flotation devices on board as a result of other requirements and common safe boating practices. Based on the past temporary rules, we observed no information and received no data to confirm there were additional costs as a result of these provisions.

In addition, the initial test results at the current operating parameters of two volts per inch indicate that the majority of commercial and recreational vessels that regularly transit the CSSC will be permitted to enter the regulated navigation area and safety zone under certain conditions. Those vessels that will not be permitted to pass through the barrier may be permitted, on a case by case basis, to pass via a dead ship tow by a commercial vessel that is able to transit.

We expect the benefits of this rule will mitigate marine safety risks as a result of the operation and maintenance of the fish barriers by the ACOE. This rule will allow commerce to continue through the waters adjacent to and over these barriers. This rule will also mitigate the possibility of an Asian Carp introduction into Lake Michigan, and the Great Lakes system, as a result of commerce through the CSSC.

At this time, based on available information from past temporary rules, we anticipate that this rule will not be economically significant under Executive Order 12866 (i.e., have an annual effect on the economy of $100 million or more). The Coast Guard urges interested parties to submit comments that specifically address the economic impacts of this temporary interim rule. Comments can be made online by following the procedures outlined above in the **ADDRESSES** section.

Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider whether regulatory actions 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. An RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). The Coast Guard determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Therefore, an RFA analysis is not required for this rule. The Coast Guard, nonetheless, expects that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

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

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with tribal governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that 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. Nevertheless, Indian tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT.**

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 temporary 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 the category of actions which do not individually or cumulatively have significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2 Figure 2–1, paragraph (34)(g), as well as paragraph (27) of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the establishing, disestablishing, or changing of regulated navigation areas and security or safety zones. This temporary rule will assist the aforementioned multi-agency effort to research and manage the possible impact of the Asian carp on the Great Lakes. 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.

§ 165.T09–1004 [Removed]

■ 2. Remove § 165.T09–1004.

§ 165.923 [Suspended]

■ 3. Suspend § 165.923 from January 6, 2010 until 5 p.m. on December 1, 2010.

■ 4. Add new temporary § 165.T09–1080 as follows:

§ 165.T09–1080 Safety Zone and Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Safety Zone.*

(1) The following area is a temporary safety zone: All waters of the CSSC located between mile marker 296.1 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(2) *Regulations.*

(i) All vessels are prohibited from transiting the safety zone with any non-potable water on board if they intend to release that water in any form within, or on the other side of the safety zone. Non-potable water includes but is not limited to any water taken on board to control or maintain trim, draft, stability or stresses of the vessel, or taken on board due to free communication between the hull of the vessel and exterior water. Potable water is water treated and stored aboard the vessel that is suitable for human consumption.

(ii) Vessels with non-potable water onboard are permitted to transit the safety zone if they have taken steps to prevent the release of that water in any form, in or on the other side of, the safety zone, or alternatively if they have plans to dispose of the water in a biologically sound manner.

(iii) Vessels with non-potable water aboard that intend to discharge on the other side of the zone must contact the COTP, her designated representative or her on-scene representative and obtain permission to transit and discharge prior to transit. Examples of discharges that may be approved by the COTP include plans to dispose of the water in a biologically sound manner or demonstrate through testing that the non-potable water does not contain potential live Silver or Asian carp, or viable eggs or, gametes from these carp.

(iv) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone by vessels with non-potable water on board is prohibited unless authorized by the Captain of the Port Lake Michigan, her designated representative, or her on-scene representative.

(v) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on her behalf. The on-scene representative of the Captain of the Port Lake Michigan will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF–FM radio or loudhailer. The Captain of the Port Lake Michigan or her on-scene representative may also be contacted via VHF–FM radio Channel 16 or through the Coast Guard Sector Lake Michigan Command Center at 414–747–7182.

(b) *Regulated Navigation Area.* (1) The following is a regulated navigation area (RNA): All waters of the Chicago Sanitary and Ship Canal, Romeoville, IL located between mile marker 295.0 (approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles northeast of the Romeo Road Bridge).

(2) *Regulations.*

(i) The general regulations contained in 33 CFR 165.13 apply.

(ii) Vessels that comply with the following restrictions are permitted to transit the RNA:

(A) All up-bound and down-bound barge tows that consist of barges carrying flammable liquid cargos (Grade A through C, flashpoint below 140 degrees Fahrenheit, or heated to within 15 degrees Fahrenheit of flash point) must engage the services of a bow boat at all times until the entire tow is clear of the RNA.

(B) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the RNA and must make a SECURITE call when approaching the RNA to announce intentions and work out passing arrangements.

(C) Commercial tows transiting the RNA must be made up with only wire rope to ensure electrical connectivity between all segments of the tow.

(D) All vessels are prohibited from loitering in the RNA.

(E) Vessels may enter the RNA for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the RNA.

(F) Except for law enforcement and emergency response personnel, all personnel on vessels transiting the RNA should remain inside the cabin, or as inboard as practicable. If personnel must be on open decks, they must wear a Coast Guard approved personal flotation device.

(G) Vessels may not moor or lay up on the right or left descending banks of the RNA.

(H) Towboats may not make or break tows if any portion of the towboat or tow is located in the RNA.

(I) Persons on board any vessel transiting this RNA in accordance with this rule or otherwise are advised they do so at their own risk.

(c) *Definitions.* The following definitions apply to this section:

Bow boat means a towing vessel capable of providing positive control of the bow of a tow containing one or more barges, while transiting the RNA. The bow boat must be capable of preventing a tow containing one or more barges from coming into contact with the shore and other moored vessels.

Designated representative means the Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago.

Vessel means every description of watercraft or other artificial contrivance used, or capable or being used, as a means of transportation on water. This definition includes, but is not limited to, barges.

(d) *Enforcement Period.* The regulated navigation area and safety zone will be enforced from 5 p.m. on December 18, 2009, until 5 p.m. on December 1, 2010. This regulated navigation area and safety zone are enforceable with actual notice by Coast Guard personnel beginning December 18, 2009, until January 6, 2010.

(e) *Compliance.* All persons and vessels must comply with this section and any additional instructions or orders of the Ninth Coast Guard District Commander, or his designated representatives. Any person on board any vessel transiting this RNA in accordance with this rule or otherwise does so at their own risk.

(f) *Waiver.* For any vessel, the Ninth Coast Guard District Commander, or his designated representatives, may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of vessel and mariner safety.

Dated: December 18, 2009.

Peter V. Neffenger

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. E9–31350 Filed 1–5–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0671; FRL–8802–4]

Choline chloride; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of choline chloride (CAS Reg. No. 67–48–1) applied pre-harvest on all raw agricultural commodities when applied/used as a solvent. Loveland Products, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of choline chloride.

DATES: This regulation is effective January 6, 2010. Objections and requests for hearings must be received on or before March 8, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0671. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Deirdre Sunderland, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 603–0851; e-mail address: *sunderland.deirdre@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0671 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 8, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2008–0671, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of December 3, 2008 (73 FR 73648) (FRL–8391–3), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 8E7387) by Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of choline chloride when used as an inert ingredient in pesticide formulations applied pre-harvest. That notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including

all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene ploymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by choline chloride are discussed in this unit. The following provides a brief summary of the risk assessment and conclusions from the Agency's review of choline chloride. The Agency's full decision document for this action is available in the Agency's electronic docket (regulations.gov) under the docket number EPA–HQ–OPP–2008–0671.

Choline chloride is a quaternary ammonium salt which dissociates in water resulting in a positively charged quaternary hydroxyl alkylammonium ion and a negatively charged chloride ion. Choline is an essential component of the human diet and acts as a precursor to acetylcholine, phospholipids, and the methyl donor betaine. It is important for the structural integrity of cell membranes, cholinergic neurotransmission, transmembrane signaling, methyl metabolism, and lipid and cholesterol transport and metabolism.

Choline was officially made an ''essential nutrient'' in 1998 and adequate intake (AI) levels were established (women-425 milligram/day (mg/day), pregnant women-450 mg/day, men and lactating women-550 mg/day). The Daily Upper Intake Level for choline is 3.5 grams for adults. Research indicates that many individuals are not getting enough choline, with daily intake levels far below the AI.

Chloride is a binary compound of chlorine; a salt of hydrochloric acid. Chloride is the major extracellular anion and contributes to many body functions including the maintenance of osmotic pressure, acid-base balance, muscular activity, and the movement of water between fluid compartments. The World Health Organization has performed two assessments which determined that from a toxicological point of view, there were no concerns for the chloride ion. It was considered to be naturally-occurring and a normal participant of animal and human metabolism.

Choline chloride has demonstrated a low acute oral toxicity with LD_{50} values for rats ranging from 3,150 to ≥ 6,000 milligram/kilogram (mg/kg) and LD_{50} for mice in the range of 3,900 to 6,000 mg/kg. Although appropriate animal studies are lacking for acute dermal toxicity, an *in vitro* percutaneous absorption study performed under occluded and unoccluded conditions showed that choline chloride is expected to have a low potential for percutaneous absorption. Acceptable acute inhalation studies are not available. Studies conducted in the early 1960's showed only slight transient irritation of the skin and eye.

Repeat dose animal studies on choline chloride are limited. One study in mice evaluated the impact of 200 mg/kg/day choline chloride given orally or intranasally for 28 days. No adverse effects were observed with regards to body weight, food and water consumption, hematology, clinical biochemistry, or histopathology of various organs (lung, heart, liver, spleen, and kidney). Results from intranasal exposure to choline chloride were comparable with their respective controls and to other treatment groups. The no adverse effects are observed (NOAEL) for oral and intranasally administered choline chloride is ≥ 200 mg/kg/day.

A 72–week feeding study in rats administered 500 mg/kg/day of choline chloride and observed the animals for 30 weeks post exposure. There were no significant difference between the control and treated group in relation to body weights, relative liver weight, survival rates, and the number of neoplastic liver nodules, hepatocellular carcinomas, lung tumors, leukemia, or other tumors. This study resulted in a NOAEL of 500 mg/kg/day (the highest dose tested).

Choline is a precursor to the vital neurotransmitter acetylcholine. Studies show that choline has beneficial effects on the nervous system and memory. Choline is necessary to promote proper development in the fetus and infant and prevent cognitive problems. Choline chloride is not expected to cause neurotoxicity and it is not a known endocrine disruptor nor are its metabolites related to any class of known endocrine disruptors. Based on the results of the *in vitro* and *in vivo* studies the Agency concluded that choline chloride is not expected to be carcinogenic or mutagenic.

Since the 1930's choline chloride has been used as a widespread nutrient in animal feed without adverse effects reported on fertility or teratogenicity. The Food and Drug Administration (FDA) requires choline be added to non-milk based infant formulas at a minimum concentration of 7 mg for every 100 kilocalories (21 CFR 107.100). Although one study did show developmental effects, they were only seen at very high doses (≥4,160 mg/kg/day) and only in the presence of maternal toxicity. There were no observed adverse effects for both mothers and pups exposed to 1,250 mg/kg/day. Based on this information the Agency concluded that choline chloride, when used as an inert ingredient, will not cause reproductive or developmental toxicity and therefore, does not anticipate an increased risk to infants and children.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information

concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Exposure from the use of choline chloride is expected through the oral route via food and drinking water. Exposure via the dermal route may occur for those individuals applying the product both occupationally and residentially. Due to the rapid degradation of the chemical and the natural presence of choline and chloride in the environment, exposure from the use of choline chloride as an inert ingredient in pesticide products is not expected to increase the aggregate exposure to all subpopulation including infants and children and therefore a quantitative exposure assessment has not been performed.

VI. Cumulative Effects

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to choline chloride and any other substances, and these chemicals do not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that these chemicals have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

VII. Additional Safety Factor for the Protection of Infants and Children.

Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. EPA concluded that the FQPA safety factor for choline chloride should be reduced to 1X.

The database for choline chloride is adequate to make a determination of safety for infants and children. Choline is a natural component of a variety of commonly consumed foods. It has been added as a supplement to infant formula in the United States for decades. In addition to dietary consumption of choline and chloride, choline is made endogenously in the human body. Choline is a precursor to the vital neurotransmitter acetylcholine. Studies show that choline has beneficial effects on the nervous system and memory. Choline is necessary to promote proper development in the fetus and infant and prevent cognitive problems. Choline chloride is not expected to cause neurotoxicity.

Chloride is also important for many biological functions. It helps to maintain the fluid balance of cells, proper blood volume, blood pressure, and the pH of body fluids. The World Health Organization has performed two assessments which determined that from a toxicological point of view, there were no concerns for the chloride ion. It was considered to be naturally-occurring and a normal participant of animal and human metabolism.

Choline chloride has been used as a widespread nutrient in animal feed since the 1930's without adverse effects reported on fertility or teratogenicity. Although one study in mice did show developmental effects, they were only seen at very high doses (≥4,160 mg/kg/day) and only in the presence of maternal toxicity. There were no observed adverse effects for both mothers and pups exposed to 1,250 mg/kg/day.

Exposure to choline chloride is not expected to significantly increase the pre-existing levels found in commonly eaten foods. Due to the negligible anticipated crop residues and subsequent exposure, the low toxicity of the chemical and its metabolites, the bodies need for choline from a dietary source, and the beneficial role choline plays in fetal development and memory; the safety factor has been reduced to 1 X.

VIII. Determination of Safety for U.S. Population

In addition to its low toxicity, exposure to choline chloride will be limited. The expected exposure pathway is via the oral and the dermal routes. Humans are currently exposed to choline and chloride on a daily basis through commonly eaten foods (both naturally occurring and when added as a nutrient) and through the bodies natural ability to synthesize the nutrient. It is unlikely that the exposure from choline chloride, when used as an inert ingredient applied pre-harvest to food commodities, will significantly increase the natural concentration of choline and chloride in foods. Choline and chloride are also found naturally in the environment. Choline chloride is readily biodegradable and because of its high water solubility it is expected that most of the inert will be washed from the plant prior to consumption. Once in water, its preferred media, it will be broken into a quaternary hydroxyl alkylammonium ion and a chloride ion.

Taking into consideration all available information on choline chloride, it has been determined that there is a reasonable certainty that no harm to any population subgroup, including infants and children, will result from aggregate exposure to this chemical. Therefore, the exemption from the requirement of a tolerance for residues of choline chloride (CAS Reg. No. 67–48–1), when used as an inert ingredient in pre-harvest applications, under 40 CFR 180.920 can be considered safe under section 408(q) of the FFDCA.

IX. Other Considerations

A. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Tolerances

The Agency is not aware of any country requiring a tolerance for choline chloride nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusions

Therefore, a tolerance exemption is established for choline chloride (CAS Reg. No. 67–48–1) when used as inert ingredient in pesticide formulations applied to growing crops only.

XI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

XII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 24, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In §180.920, the table is amended by adding alphabetically the following inert ingredients:

§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.

Inert ingredients	Limits	Uses
* * *	*	*
Choline chloride (CAS Reg. No. 67–48–1)	---------- ------	As a solvent
* * *	*	*

[FR Doc. E9–31280 Filed 1–5–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0610; FRL–8802–5]

Dibenzylidene Sorbitol; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of dibenzylidene sorbitol (CAS Reg. No. 32647–67–9) under 40 CFR 180.920 when used as the inert ingredient in pesticdes formulations applied in or on growing crops. Dow Agrosciences LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of dibenzylidene sorbitol.

DATES: This regulation is effective January 6, 2010. Objections and requests for hearings must be received on or before March 8, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0610. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only

available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Elizabeth Fertich, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8560; e-mail address: *fertich.elizabeth@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR cite at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0610 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 8, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0610, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of September 4, 2009 (71 FR 45848) (FRL–8434–4), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 9E7581) by Dow Agrosciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268–1054. The petition requested that 40 CFR 180.920 be amended by establishing an exemption from the requirement of a tolerance for residues of dibenzylidene sorbitol. That notice included a summary of the petition prepared by the petitioner. No substantive comments were received in response to the notice of filing.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term ''inert'' is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The

nature of the toxic effects caused by dibenzylidene sorbitol (DBS) are discussed in this unit.

Some of the toxicological studies available in the database were conducted with Millad® 3905. Millad® 3905 is a tradename for the inert ingredient DBS and contains a minimum of 96% DBS.

DBS is not expected to pose a hazard when used for its proposed use pattern. A skin sensitization study in guinea pigs determined that DBS is not a sensitizer. A primary dermal irritation study in rats determined that DBS is not irritating. The combined LD_{50} of DBS in an acute oral toxicity study in mice was 12,800 mg/kg/day. The dermal LD_{50} in mice (males only) was 6400 mg/kg/day.

In a 90–day subchronic oral toxicity study in mice and rats, the no-observed-adverse-effect-level (NOAEL) was determined to be 3200 mg/kg/day for mice and 2000 mg/kg/day for rats. No treatment-related clinical signs of toxicity or systemic toxicity were noted during the 90–day test period at the highest dose tested. In a separate 13–week oral toxicity with recovery phase assessment study in rats there were no significant treatment-related effects noted and the NOAEL was determined to be 20,000 parts per million (ppm) (1261.3 mg/kg/day for males and 1479.2 mg/kg/day for females). In a 90–day subchronic oral toxicity study in dogs the NOAEL was determined to be 92.1 mg/kg/day for males and 91.5 mg/kg/day for females. No evidence of systemic toxicity was observed at doses as high as 2500 ppm (92.1 and 91.5 mg/kg/day in males and females, respectively; the highest dose tested).

In a mammalian cell gene mutation assay at the TK locus, mouse lymphoma L5178Y cells cultured *in vitro* were exposed to Millad® 3905. The study concluded that Millad® 3905 was negative in the *in vitro* mammalian cells in culture gene mutation assay in mouse lymphoma L5178Y cells, both with and without S9-mix under the conditions of testing.

In a mouse bone marrow micronucleus assay mice were treated orally by gavage with Millad® 3905. There were no signs of toxicity during the study and the test substance is considered negative in the mouse bone marrow micronucleus test.

In a reverse gene mutation assay in bacteria of S. typhimurium were exposed to Millad® 3905. It was negative for mutagenicity both in the presence and absence of metabolic activations.

Based on the results from these studies, EPA concluded that DBS is not likely to be genotoxic. No carcinogenicity studies are available on DBS. Based on the lack of any systemic toxicity at high doses in rats and mice in a 90–day study and the lack of mutagenicity, EPA concluded that DBS is not likely to be carcinogenic. It is also likely that DBS will metabolized into sorbitol and benzaldehyde in the body. Sorbitol is a natural constituent and is considered non-carcinogenic and benzaldehyde has been shown to be non-carcinogenic in rats at doses up to 400 mg/kg/day. (Bishop, 1990)

No neurotoxicity studies are available on DBS, however, there were no clinical signs of neurotoxicity were observed in the database.

V. Aggregate Exposures

In examining aggregate exposure, section 408 of FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

The primary route of exposure to DBS from its use as an inert ingredient in pesticide products would most likely be through consumption of food to which pesticide products containing it have been applied, and possibly through drinking water (from runoff).

In addition to pesticide use, DBS has reported uses in personal care products, such as antiperspirants, shampoos, conditioners, and moisturizers. There is a potential exposure via dermal and inhalation routes based on its use pattern in personal care products.

No hazard was identified for the acute and chronic dietary assessment (food and drinking water), or for the short, intermediate, and long term residential assessments, and therefore no aggregate risk assessments were performed.

VI. Cumulative Effects

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

Unlike other pesticide ingredients for which EPA has followed as cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to DBS and any other substances and, DBS does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that DBS has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

VII. Additional Safety Factor for the Protection of Infants and Children

Section 408 of the FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA safety factor (SF). In applying this provision, EPA either retains the default value of 10X or uses a different additional safety factor when reliable data to EPA supports the choice of a different factor. The toxicity database is sufficient for DBS and potential exposure is adequately characterized given the low toxicity of the chemical. In terms of hazard, there are low concerns and no residual uncertainties regarding prenatal and/or postnatal toxicity. DBS has low subchronic

toxicity. Although no developmental or reproductive studies, *per se*, were identified, subchronic 90–day studies in dogs, rats and mice have not demonstrated any systemic toxicity or effects on the reproductive organs. No acute or subchronic neurotoxicity studies are available, but there were no signs of neurological effects observed in the database at high doses. Therefore, the Agency concluded that the developmental neurotoxicity study is not required. No immunotoxicity study is available, however, no systemic toxicity was observed in mice, rats and dogs at high doses. In addition, no hazard has been identified following exposure to DBS. Based on this information, there is no concern at this time for increased sensitivity to infants and children to DBS when used as an inert ingredient in pesticide formulations and a safety factor analysis has not been used to assess risk. For the same reason, EPA has determined that an additional safety factor is not needed to protect the safety of infants and children.

VIII. Determination of Safety

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Residues of concern are not anticipated for dietary exposure (food and drinking water) or for residential exposure from the use of DBS for the proposed use pattern as an inert ingredient in pesticide products. As discussed elsewhere, EPA expects aggregate exposure to DBS to pose no appreciable dietary risk given that the data on DBS show a lack of any systemic toxicity at high doses in mice and rats.

Taking into consideration all available information on DBS, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to DBS. Therefore, the establishment of an exemption from tolerance under 40 CFR 180.920 for residues of DBS when used as an inert ingredient in pesticide formulations applied pre-harvest can be considered safe under section 408 of the FFDCA. Dow Agrosciences submitted a petition (#9E7581) proposing to establish an exemption from the requirement of a tolerance under 40 CFR 180.920 (pre-harvest only) for residues of DBS when used as a pesticide inert ingredient, limited to herbicide use only with a 3% formulation cap. Based upon review of the data supporting the petition, EPA has modified the requested exemption. No limitations are necessary because no hazard was identified.

IX. Other Considerations

A. Endocrine Disruptors

EPA is required under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate.'' Following recommendations of its Endocrine Disruptor and Testing Advisory Committee (EDSTAC), EPA determined that there was a scientific basis for including, as part of the program, the androgen and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the Program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

When additional appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, DBS may be subjected to further screening and/or testing to better characterize effects related to endocrine disruption.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

X. Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of dibenzylidene sorbitol. Accordingly, EPA finds that exempting dibenzylidene sorbitol from the requirement of a tolerance will be safe.

XI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between

the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

XII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 24, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In §180.920, the table is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.920 Inert Ingredients used pre-harvest; exemptions from the requirement of a tolerance.

* * * * *

Inert ingredients	Limits	Uses
dibenzylidene sorbitol (32647-67-9)		Thinning agent

* * * * *

[FR Doc. E9–31281 Filed 1–5–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0824; FRL–8801–9]

Extension of Tolerances for Emergency Exemptions (Multiple Chemicals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends time-limited tolerances for the pesticides listed in Unit II. of the **SUPPLEMENTARY INFORMATION**. These actions are in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of these pesticides. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA.

DATES: This regulation is effective January 6, 2010. Objections and requests for hearings must be received on or before March 8, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0824. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: See the table in this unit for the name of a specific contact person. The following information applies to all contact persons: Emergency Response Team, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

Pesticide/CFR Citation	Contact Person
Bifenthrin — § 180.442	Andrea Conrath *conrath.andrea@epa.gov* (703) 308–9356
Avermectin — § 180.449	Andrew Ertman *ertman.andrew@epa.gov* (703) 308–9367

Pesticide/CFR Citation	Contact Person
Boscalid — § 180.589 Mancozeb — § 180.176 Pendimethalin — § 180.361 Pyraclostrobin — § 180.582 Zoxamide — § 180.567	Stacey Groce *groce.stacey@epa.gov* (703) 305-505
Dinotefuran — § 180.603	Libby Pemberton *pemberton.libby@epa.gov* (703) 308–9364

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0824 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 8, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0824, by one of the following methods:

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

II. Background and Statutory Findings

EPA published final rules in the **Federal Register** for each pesticide listed. The initial issuance of these final rules announced that EPA, on its own initiative, under section 408 of FFDCA, 21 U.S.C. 346a, was establishing time-limited tolerances.

EPA established the tolerances because section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18 . Such tolerances can be established without providing notice or time for public comment.

EPA received requests to extend the use of these chemicals for a subsequent growing season. After having reviewed these submissions, EPA concurs that emergency conditions exist. EPA assessed the potential risks presented by residues for each pesticide. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIRA section 18.

The data and other relevant material have been evaluated and discussed in the final rule originally published to support these uses. Based on that data and information considered, the Agency reaffirms that extension of these time-limited tolerances will continue to meet the requirements of section 408(l)(6) of FFDCA. Therefore, the time-limited tolerances are extended until the date listed. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations (CFR). Although these tolerances will expire and are revoked on the date listed, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on the commodity after that date will not be unlawful, provided the residue is present as a result of an application or use of a pesticide at a time and in a manner that was lawful under FIFRA, the tolerance was in place at the time of the application, and the residue does not exceed the level that was authorized by the tolerance. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Tolerances for the use of the following pesticide chemicals on specific commodities are being extended:

1. *Avermectin*. EPA has authorized under FIFRA section 18 the use of avermectin on bulb onions for control of thrips in Colorado (40 CFR 180.449(b)). This regulation extends a time-limited tolerance for combined residues of the insecticide avermectin B_1 and its delta-8,9-isomer in or on bulb onions at 0.005 parts per million (ppm) for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2012. A time-limited tolerance was originally published in the **Federal Register** of February 7, 2007 (72 FR 5624–5630) (FRL–8110–8).

2. *Bifenthrin*. EPA has authorized under FIFRA section 18 the use of bifenthrin on orchardgrass for control of the orchardgrass billbug in Oregon (40 CFR 180.442(b)). This regulation extends time-limited tolerances for residues of the insecticide bifenthrin, (2-methyl [1,1′-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on orchardgrass, forage at 2.5 ppm and orchardgrass, hay at 4.5 ppm for an additional 3–year period. These tolerances will expire and are revoked on December 31, 2012. Time-limited tolerances were originally published in the **Federal Register** of July 26, 2002 (67 FR 48790) (FRL–7187–8), and revised in the **Federal Register** of June 11, 2008 (73 FR 33018) (FRL–8366–4).

3. *Boscalid*. EPA has authorized under FIFRA section 18 the use of boscalid on Endive, Belgian for control of the fungal pathogen, *Scelerotinia sclerotiorum* in California (40 CFR 180.589(b)). This regulation extends a time-limited tolerance for residues of the fungicide boscalid, 3-pyridinecarboxamide, 2-chloro-*N*-(4′-chloro[1,1′-biphenyl]-2-yl) in or on Endive, Belgian at 16 ppm for an additional 1–year period. This tolerance will expire and is revoked on December 31, 2010. A time-limited tolerance was originally published in the **Federal Register** of March 28, 2008 (73 FR 16553–16559) (FRL–8354–4).

4. *Dinotefuran*. EPA has authorized under FIFRA section 18 the use of dinotefuran on rice for control of rice stink bug (*Oebalus pugnax* (F.)) in Texas (40 CFR 180.603(b)). This regulation extends a time-limited tolerance for combined residues of the insecticide dinotefuran, *N*-methyl-*N*′-nitro-*N*″-((tetrahydro-3-furanyl) methyl)guanidine, and its metabolites DN, 1-methyl-3-(tetrahydro-3-furylmethyl)guanidine, and UF, 1-methyl-3-(tetrahydro-3-furylmethyl) urea, expressed as dinotefuran in or on rice, grain at 2.8 ppm for an additional 3–year period. This tolerance will expire and is revoked on December 31, 2012. A time-limited tolerance was originally published in the **Federal Register** of March 25, 2009 (74 FR 12596–12601) (FRL–8401–5).

5. *Mancozeb*. EPA has authorized under FIFRA section 18 the use of mancozeb on ginseng for control of phytophthora stem and leaf blight in Michigan and Wisconsin (40 CFR 180.176(b)). This regulation extends a time-limited tolerance for combined residues of the fungicide mancozeb (calculated as zinc ethylenebisdithiocarbamate and its metabolite, ethylenethiourea (ETU)), in or on ginseng, root at 2.0 ppm for an additional 1–year period. This tolerance will expire and is revoked on December 31, 2010. A time limited tolerance was originally published in the **Federal Register** of October 9, 1998 (63 FR 54362) (FRL–6029–5).

6. *Pendimethalin*. EPA has authorized under FIFRA section 18 the use of pendimethalin on Bermuda grass for control of common sandbur and other sandbur species (*Cenchrus echinatus*), in Texas and Oklahoma (40 CFR 180.361(b)). This regulation extends time-limited tolerances for combined residues of the herbicide, pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol, in or on Bermuda grass forage and hay at 25 ppm and 60 ppm, respectively, for an additional 1–year period. These tolerances will expire and are revoked on December 31, 2010. Time-limited tolerances were originally published in the **Federal Register** of March 18, 2009 (74 FR 11489–11494) (FRL–8400–1).

7. *Pyraclostrobin*. EPA has authorized under FIFRA section 18 the use of pyraclostrobin on Endive, Belgian for control of the fungal pathogen, Sclerotinia sclerotiorum in California (40 CFR 180.582(b)). This regulation extends a time-limited tolerance for combined residues of the fungicide pyraclostrobin (carbamic acid), 2-[[[1-(4-chlorophenyl)-1H-pyrazol-3-yl]oxy]methyl]phenyl methoxy-methyl ester, and its desmethoxy metabolite, methyl-*N*-[[[1-(4-chlorophenyl) pyrazol-3-yl]oxy]o-tolyl] carbamate), expressed as parent compound, in or on Endive, Belgian at 11 ppm for an additional 1–year period. This tolerance will expire and is revoked on December 31, 2010. A time-limited tolerance was originally published in the **Federal Register** of April 23, 2008 (73 FR 21839–21843) (FRL–8359–7).

8. *Zoxamide*. EPA has authorized under FIFRA section 18 the use of zoxamide on ginseng for control of phytophthora stem and leaf blight in Michigan and Wisconsin (40 CFR 180.567(b)). This regulation extends a time-limited tolerance for residues of the fungicide zoxamide, 3, 5-dichloro-*N*-(3-chloro-1-ethyl-1-methyl-2-oxopropyl)-4-methylbenzamide, in or on ginseng at 0.06 ppm for an additional 1–year period. This tolerance will expire and is revoked on December 31, 2010. A time-limited tolerance was originally published in the **Federal Register** of March 31, 2004 (69 FR 16800) (FRL–7349–3).

III. Statutory and Executive Order Reviews

This final rule establishes tolerances under section 408(d) of FFDCA in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between

the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

IV. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 24, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.176 [Amended]

■ 2. In § 180.176, in the table to paragraph (b), amend the entry for ginseng root by revising the expiration date ''12/31/09'' to read ''12/31/10.''

§ 180.361 [Amended]

■ 3. In § 180.361, in the table to paragraph (b), amend the entry for Bermuda grass, forage, and Bermuda grass, hay by revising the expiration dates ''12/31/09'' to read ''12/31/10.''

§ 180.442 [Amended]

■ 4. In § 180.442, in the table to paragraph (b), amend the entries for orchardgrass, forage and orchardgrass, hay by revising the expiration dates ''12/31/09'' to read ''12/31/12.''

§ 180.449 [Amended]

■ 5. In § 180.449, in the table to paragraph (b), amend the entry for onion, bulb by revising the expiration date ''12/31/09'' to read ''12/31/12.''

§ 180.567 [Amended]

■ 6. In § 180.567, in the table to paragraph (b), amend the entry for ginseng by revising the expiration date ''12/31/09'' to read ''12/31/10.''

§ 180.582 [Amended]

■ 7. In § 180.582, in the table to paragraph (b), amend the entry for Endive, Belgian by revising the expiration date ''12/31/09'' to read ''12/31/10.''

§ 180.589 [Amended]

■ 8. In § 180.589, in the table to paragraph (b), amend the entry for Endive, Belgian by revising the expiration date ''12/31/09'' to read ''12/31/10.''

§ 180.603 [Amended]

■ 9. In § 180.603, in the table to paragraph (b), amend the entry for rice, grain by revising the expiration date ''12/31/09'' to read ''12/31/12.''

[FR Doc. E9–31279 Filed 1–5–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0662; FRL–8801–1]

Acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt copolymer; when used as an inert ingredient in a pesticide chemical formulation under 40 CFR 180.960. Akzo Nobel Surface Chemistry LLC submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt copolymer on food or feed commodities.

DATES: This regulation is effective January 6, 2010. Objections and requests for hearings must be received on or before March 8, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0662. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Alganesh Debesai, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8353; e-mail address: *debesai.alganesh@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or

pesticide manufacturer. Potentially affected entities may include, but are not limited to:

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

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

B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.gpoaccess.gov/ecfr*.

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2009–0662 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before March 8, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2009–0662, by one of the following methods.

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

II. Background and Statutory Findings

In the **Federal Register** of October 7, 2009 (74 FR 51600) (FRL–8792–7), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the receipt of a pesticide petition (PP 9E7599) filed by Akzo Nobel Surface Chemistry LLC. The petition requested that 40 CFR 180.960 be amended by establishing an exemption from the requirement of a tolerance for residues of acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt copolymer; CAS Reg. No. 1152297–42–1. That notice included a summary of the petition prepared by the petitioner and solicited comments on the petitioner's request. The Agency did not receive any substantive comments

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

III. Risk Assessment and Statutory Findings

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be shown that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. In the case of certain chemical substances that are defined as polymers, the Agency has established a set of criteria to identify categories of polymers expected to present minimal or no risk. The definition of a polymer is given in 40 CFR 723.250(b) and the exclusion criteria for identifying these low-risk polymers are described in 40 CFR 723.250(d). Acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt conforms to the definition of a polymer given in 40 CFR 723.250(b) and meets the following criteria that are used to identify low-risk polymers.

1. The polymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

2. The polymer does contain as an integral part of its composition the atomic elements carbon, hydrogen, and oxygen.

3. The polymer does not contain as an integral part of its composition, except as impurities, any element other than those listed in 40 CFR 723.250(d)(2)(ii).

4. The polymer is neither designed nor can it be reasonably anticipated to substantially degrade, decompose, or depolymerize.

5. The polymer is manufactured or imported from monomers and/or reactants that are already included on the TSCA Chemical Substance Inventory or manufactured under an applicable TSCA section 5 exemption.

6. The polymer is not a water absorbing polymer with a number average molecular weight (MW) greater than or equal to 10,000 daltons.

Additionally, the polymer also meets as required the following exemption criteria specified in 40 CFR 723.250(e).

7. The polymer's number average MW of greater than 1,000 and less than 10,000 daltons. The polymer contains less than 10% oligomeric material below MW 500 and less than 25% oligomeric material below MW1,000, and the polymer does not contain any reactive functional groups.

Thus, acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt meets the criteria for a polymer to be considered low risk under 40 CFR 723.250. Based on its conformance to the criteria in this unit, no mammalian toxicity is anticipated from dietary, inhalation, or dermal exposure to acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt.

IV. Aggregate Exposures

For the purposes of assessing potential exposure under this exemption, EPA considered that acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure was possible. The number average MW of acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt is 1,500 daltons. Generally, a polymer of this size would be poorly absorbed through the intact gastrointestinal tract or through intact human skin. Since acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt conform to the criteria that identify a low-risk polymer, there are no concerns for risks associated with any potential exposure scenarios that are reasonably foreseeable. The Agency has determined that a tolerance is not necessary to protect the public health.

V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance or tolerance exemption, the Agency consider ''available information'' concerning the cumulative effects of a particular chemical's residues and ''other substances that have a common mechanism of toxicity.'' For the purposes of this tolerance action, EPA has not assumed that acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt has a common mechanism of toxicity with other substances, based on the anticipated absence of mammalian toxicity. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

VI. Additional Safety Factor for the Protection of Infants and Children

Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt, EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VII. Determination of Safety

Based on the conformance to the criteria used to identify a low-risk polymer, EPA concludes that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt.

VIII. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

B. International Tolerances

The Agency is not aware of any country requiring a tolerance for acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

IX. Conclusion

Accordingly, EPA finds that exempting residues of acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt from the requirement of a tolerance will be safe.

X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these rules from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power

and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes, or otherwise have any unique impacts on local governments. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

Although this action does not require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. As such, to the extent that information is publicly available or was submitted in comments to EPA, the Agency considered whether groups or segments of the population, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

XI. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 7, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. In §180.960, the table is amended by adding alphabetically the following polymers to read as follows:

§ 180.960 Polymers; exemptions from the requirement of a tolerance.

* * * * *

Polymer	CAS No.
* * *	* *
Acrylic acid-benzyl methacrylate-1-propanesulfonic acid, 2-methyl-2-[(1-oxo-2-propenyl)amino]-, monosodium salt, minimum number average molecular weight (in amu), 1500.	1152297-42-1
* * *	* *

[FR Doc. E9–31174 Filed 1–5–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 700, 720, 721, 723, and 725

[EPA–HQ–OPPT–2008–0296; FRL–8794–5]

RIN 2070–AJ41

TSCA Section 5 Premanufacture and Significant New Use Notification Electronic Reporting; Revisions to Notification Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is amending Toxic Substances Control Act (TSCA) section 5 reporting regulations at 40 CFR parts 700, 720, 721, 723, and 725. The amendments establish electronic reporting requirements for TSCA section 5 submissions. This action is intended to streamline and reduce the administrative costs and burdens of TSCA section 5 notifications for both industry and EPA by establishing standards and requirements for the use of EPA's Central Data Exchange (CDX) to electronically submit premanufacture notices (PMNs) and other TSCA section 5 notices and support documents to the Agency. EPA is also amending TSCA section 5 user fee regulations by adding a new User Fee Payment Identity Number field to the PMN form, to enable the Agency to match more easily a particular user fee with its notice submission. Lastly, EPA is amending the PMN form by removing the Agent signature block field, and thus the requirement for designated agents to sign the form.

DATES: This final rule is effective April 6, 2010.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2008–0296. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Greg Schweer, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8469; e-mail address: *schweer.greg@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be affected by this action if you manufacture, import, or process chemical substances for commercial purposes that are subject to TSCA. Potentially affected entities may include, but are not limited to:

- Manufacturers, importers, and processors of chemical substances or mixtures (NAICS codes 325 and 324110, e.g., chemical manufacturing and processing and petroleum refineries).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR parts 700, 720, 721, 723, and 725 for TSCA section 5–related obligations. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action is the Agency Taking?

EPA is issuing these amendments pursuant to TSCA section 5, 15 U.S.C. 2604. The amendments are to the TSCA Section 5 Premanufacture and Significant New Use Notification regulations and related provisions. This final rule was proposed in the **Federal Register** issue of December 22, 2008 (Ref. 1). The purpose of the amendments is to require use of an electronic reporting mechanism for TSCA section 5 notices.

The Government Paperwork Elimination Act (GPEA) (Public Law 105–277 (44 U.S.C. 3504)) requires Federal agencies to provide for the:

1. Option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper.

2. Use and acceptance of electronic signatures, when practicable. EPA's Cross-Media Electronic Reporting Regulation (CROMERR) (40 CFR part 3), published in the **Federal Register** issue of October 13, 2005 (Ref. 2) provides that any requirement in title 40 of the CFR to submit a report directly to EPA can be satisfied with an electronic submission that meets certain conditions once the Agency publishes a notice that electronic document submission is available for that requirement (See Unit III.F. for more information on electronic signatures.).

In light of GPEA and CROMERR, EPA is issuing these amendments to require manufacturers (including importers) and processors of TSCA chemical substances to use the Internet, through EPA's CDX, to submit TSCA section 5 notices and related documents to the Agency. These include PMNs (40 CFR part 720), Significant New Use Notices (SNUNs) (40 CFR part 721), Test Market Exemption Applications (TMEAs) (40 CFR part 720), Low Volume Exemption notices (LVEs) (40 CFR 723.50), Low Exposure/Low Release Exemption (LoRex) notices (40 CFR 723.50), biotechnology notices for genetically modified microorganisms (40 CFR part 725), Notices of Commencement of Manufacture or Import (NOCs) (40 CFR 720.102), and other support documents (e.g., correspondence, requests for suspensions of the notice review period, amendments, and test data).

The Agency is introducing CDX reporting in three phases over a 2–year period. During the first year following the effective date of this final rule, the Agency will allow submissions via CDX, optical disc (CD or DVD), and paper. Regardless of the method of submission, EPA will require that all submissions be generated using the new electronic-PMN (e-PMN) software. One year after the effective date of this final rule, paper submissions will no longer be accepted for any new notices and support documents (including NOCs), though optical discs may continue to be used. Two years after the effective date of this final rule, optical discs will no longer be accepted, and all submitters must submit the notices and support documents identified in Table 1 of Unit III.I. via CDX. The phased approach allows submitters to gain experience in using the e-PMN software and the submission delivery system.

EPA is also amending the TSCA section 5 User Fee regulations at 40 CFR 700.45 to add a new User Fee Payment Identity Number field to the PMN form. This new field will enable the Agency to more easily match a particular user fee with its notice submission. The second new information element on the amended PMN form will be optional and consist simply of the e-mail address for the Authorized Official (AO) submitting the notice listed on the ''Submitter Identification'' section on page 3 of the PMN form. EPA is also removing the required Agent signature block field on page 2 of the form.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(1)(A) of TSCA requires persons to notify EPA at least 90 days before manufacturing a new chemical substance for commercial purposes (under TSCA manufacture includes import). Section 3(9) of TSCA defines a ''new chemical substance'' as any substance that is not on the TSCA Inventory of Chemical Substances compiled by EPA under section 8(b) of TSCA. Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) requires persons to submit a notice to EPA at least 90 days before manufacturing or processing the chemical substance for that use. GPEA requires Federal agencies to provide for the:

1. Option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper.

2. Use and acceptance of electronic signatures, when practicable.

C. How are Premanufacture Notices and Other TSCA Section 5 Notices Currently Submitted and Processed by the Agency?

Currently, TSCA section 5 submissions must be sent to EPA on paper through the U.S. mail or delivered by courier. Submitters are able to use electronic means to generate hard copies for certain TSCA section 5 notices, using the PMN form available on EPA's TSCA New Chemicals Program website (*https://cdx.epa.gov/ssl/pmn/download.asp*). The form can be filled out using the free Adobe Reader, which

allows submitters to complete the form electronically and then print out and mail it to EPA as hard copy. The Adobe Reader allows the user to complete and print the form, but it does not allow the user to save the form. Approximately 35% of TSCA section 5 notices are currently generated using this software. Most of the remaining submissions are generated using other software that has been developed by industry trade groups or individual notice submitters. A very small percentage of submitters choose to fill out the PMN form by hand or typewriter, using a version of the form downloaded from EPA's TSCA New Chemicals Program website (See *http://www.epa.gov/opptintr/newchems/pubs/pmnpart1.pdf* and *http://www.epa.gov/opptintr/newchems/pubs/pmnpart2.pdf*.).

If the submitter marks anything on the PMN form as CBI, then the submitter must submit one version of the form containing the CBI and another version of the form without CBI. The latter version is referred to as the sanitized or non-CBI version and is required for the public docket.

Upon receipt at EPA, paper submissions are assigned a ''mail received'' number, which is used to identify the submission until an official document control number (DCN) is generated, which does not occur until EPA verifies that the notice is complete. Once the mail information is captured, the submission is sent for prescreening. During prescreening, the submission is checked for completeness using criteria listed at 40 CFR 720.65. If the notice does not pass prescreening, EPA declares the original notice ''Incomplete'' and notifies the submitter that information is missing or incorrect, and that the submitter must correct the package and provide a new submission to EPA. If a new notice is not submitted, EPA will return the user fee.

After a successful prescreening, EPA generates a DCN and barcode for the submission. EPA also generates a DCN and barcode for the non-CBI version of a CBI submission and places the non-CBI version in the public docket. The original CBI submission is then kept in a hard copy case file folder in a TSCA CBI storage area for reference. Any supporting documents for the CBI submission are also assigned DCNs and barcodes, and placed in the hard copy case file folder.

III. Description of Changes for TSCA Section 5 Reporting

This unit provides a detailed description of EPA's electronic reporting software, the changes to the reporting process, the benefits of electronic reporting to both industry and EPA, and how EPA is phasing-in the electronic reporting.

A. What is CDX?

EPA's CDX is the point of entry on the Environmental Information Exchange Network (Exchange Network) for environmental data submissions to the Agency. CDX provides the capability for submitters to access their data through the use of web services. CDX enables EPA and participating program offices to work with stakeholders–including State, tribal, and local governments and regulated industries–to enable streamlined electronic submission of data via the Internet. For more information about CDX, go to *http://www.epa.gov/cdx*.

B. What is the e-PMN Software?

EPA has developed e-PMN software for use in preparing and submitting PMNs and other TSCA section 5 notices and support documents electronically to the Agency. EPA is providing two different variations of the e-PMN software, one with encryption and one without encryption. The e-PMN software with encryption, available on EPA's CDX website (*http://cdx.epa.gov/epa_home.asp*), accommodates electronic submission through CDX. The e-PMN software without encryption is available through EPA's TSCA New Chemicals Program website (*http://www.epa.gov/oppt/newchems*). Both variations of the e-PMN software are available free of charge as Internet downloads. The e-PMN software without encryption will also be available on optical discs provided by the Agency upon request (See Unit III.H. for more details.).

The e-PMN software works with Windows, Macs, Linux, and UNIX-based computers, using Extensible Markup Language (XML) specifications for more efficient data transmittal across the Internet. The e-PMN software operates using the Java 6 programming language, which can be downloaded free from *http://www.java.com*, if it is not already installed on your computer. The e-PMN software provides user-friendly navigation, works with CDX to secure on-line communication, and can create a completed Portable Document Format (PDF) file using the PMN form to accommodate internal company review prior to submission or for submission to EPA during the 2–year period before which CDX submission is required.

The e-PMN software includes features intended to be helpful for preparing PMNs and other notices using the PMN form, such as SNUNs. A validation mechanism alerts users when a field on the form, required by regulation, is either missing information or contains certain kinds of potentially incorrect information. For example, if ''use'' information is claimed CBI, then the e-PMN software indicates that the form is not complete unless the submitter has provided both specific use information on the CBI version of the form and generic use information on the non-CBI version of the form. The e-PMN software includes header pages for biotechnology notices (i.e., Microbial Commercial Activity Notices (MCANs), TSCA Experimental Release Applications (TERAs), TMEAs, and Tier I or Tier II Exemption Requests), support documents, and attachments—any document not submitted on the PMN form itself—that identify submitters and the nature of their communications.

Guidance documents developed by EPA for TSCA section 8(a) Inventory Update Rule (IUR) reporting via CDX are available at *http://www.epa.gov/opptintr/iur/pubs/factsheet.pdf* and *http://www.epa.gov/opptintr/iur/pubs/cdx_qanda.pdf*. These documents provide background information on reporting via CDX that is relevant and useful for TSCA section 5 reporting as well. EPA has developed similar specific guidance for TSCA section 5 reporting via CDX, along with the e-PMN submission software, available on EPA's TSCA New Chemicals Program website (*http://www.epa.gov/oppt/newchems).*

C. What Are the Benefits of CDX Reporting and Use of the e-PMN Software, Compared to the Existing Paper Method?

The change to phase-out paper-based submissions in favor of CDX reporting, including use of the e-PMN reporting software, is in concert with broader government efforts to move to modern, electronic methods of information gathering. The use of CDX for submission of TSCA section 5 notices and support documents is consistent with GPEA, that requires Federal agencies to provide for the:

1. Option of electronic maintenance, submission, or disclosure of information, when practicable as a substitute for paper.

2. Use and acceptance of electronic signatures, when practicable.

The e-PMN software and electronic submission via CDX will change the way that companies interact with the Agency regarding many TSCA section 5 submissions. Companies will register with EPA to submit their data electronically to the Agency via CDX and the Agency will benefit from

receiving electronic submissions. Data systems that once were populated manually will now be populated electronically, reducing the potential for error that exists when data are entered by hand.

Agency personnel will also be able to communicate more efficiently with submitters electronically, compared to using U.S. mail or courier services. PMN electronic reporting software allows for more efficient data transmittal, and the software's validation mechanism should help industry users submit fewer incomplete notices, which ultimately will save EPA and industry processing resources and reduce transaction times. EPA believes the adoption of electronic communications will reduce the reporting burden on industry by reducing both the cost and the time required to review, edit, and transmit data to the Agency (See Unit V. for more detail.). It also will allow submitters to share a draft notice within the company during the creation of a notice and to save a copy of the final file for future use. A ''Profiler,'' available in the software, will also allow for certain information to be kept on file by the submitter to avoid re-entering the same information into a new form.

Please note that although submitters will be able to communicate to EPA via CDX after the effective date of this final rule, the capacity will not initially be available for EPA to communicate back to submitters via CDX at the time this final rule becomes effective (except for e-mails related to CDX registration and copy of record notifications). Two examples of routine communications from EPA that are planned to be sent via CDX rather than the U.S. mail are the ''Acknowledgement Letter'' (acknowledging receipt of a notice) and the ''Incomplete Letter'' (stating why a notice has been declared incomplete by EPA). EPA will continue sending these letters by paper until approximately 1 year after the effective date of this final rule. EPA will issue a document in the **Federal Register** when EPA has the ability to send these letters electronically.

All information sent by the submitter via CDX will be transmitted securely to protect CBI. Furthermore, if anything in the submission has been claimed CBI, a non-CBI copy of the notice must be provided by the submitter. The new e-PMN software will facilitate the creation of this non-CBI version, eliminating the need for the submitter to do this manually.

D. What Are the Changes to the Existing PMN Form?

EPA is amending the PMN form in order to collect two new information elements. First, 40 CFR part 700 requires submitters to pay a fee when they submit PMNs, MCANs, certain PMN exemption application notices, and SNUNs to the Agency. The amended PMN form will include a new User Fee Payment Identity Number field to enable the Agency to match more easily a particular user fee with a particular notice submission. A User Fee Payment Identity Number will be required and may be a check number, a wire transfer number, or a ''Pay.gov'' transaction number used to transmit the user fee electronically. The second new information element on the amended PMN form will be optional and consist simply of the e-mail addresses for the AO or AOs listed on the Submitter Identification section on page 3 of the PMN form. The e-mail address will enable the Agency to contact the submitter through e-mail, facilitating communications related to the submission.

EPA is also removing the required Agent signature block field on page 2 of the PMN form. On the existing PMN form, if a manufacturer/importer subject to the notice requirements in 40 CFR part 720 designates an agent to submit the form pursuant to 40 CFR 720.40(e), both the manufacturer/importer and the agent must sign the form. EPA is removing the requirement that agents sign the PMN form because few agents have submitted forms in the past, and the Agent signature block is rarely used by the Agency. Eliminating the second signature also simplifies development of the e-PMN form. Note that a form submitted by an agent will still have to be signed by the manufacturer/importer's AO (an electronic signature if submitted via CDX), and the agent's name and contact information will still be provided on page 3 of the PMN form. The AO remains responsible for false or misleading statements in the notice.

The e-PMN software will allow users to print paper copies for internal company use. The printed version of the amended e-PMN form will have the same general look of the current paper PMN form, i.e., containing the same fields (with the modifications to the form discussed in Unit III.D.) and the same pagination. However, fields have been expanded to make more room for submitter information, resulting in a larger total number of pages, and realigned to make the form easier to scan. Persons who choose to submit PMNs on paper during the first year after the effective date of this final rule will be required to use the new e-PMN software to generate the paper form for each PMN or other TSCA section 5 notices they submit. EPA is requiring use of the new paper form because the Agency has incorporated into the form many scanning efficiencies for the electronic capturing of data that will be lost if a blank PMN form is printed, photocopied, and used for another submission.

E. How Will PMNs be Submitted via the Internet Using CDX?

In order to submit TSCA section 5 notices via the Internet, submitters will have to register with EPA's CDX and use the e-PMN software to prepare a data file for submission through CDX.

1. *Registering with CDX.* To register with CDX, the submitter can click on the website, *http://cdx.epa.gov/epa_home.asp*. The submitter will be asked to agree to terms and conditions, provide information about the submitter and his or her organization, select a user name and password, and download, complete, and mail an electronic signature agreement to EPA (discussed further in Unit III.F.). The electronic signature agreement is needed to identify an authorized person and establish a method to electronically sign the submission. Once EPA receives the electronic signature agreement, the submitter's user name and password will be activated, and only then will the submitter be able to send a submission to EPA through CDX. For planning purposes, please allow up to 1 week for EPA to process the electronic signature agreement and activate the submitter's user name and password.

EPA has established a 90–day time-frame between the publication date and effective date of this final rule. Companies can use this time to register with CDX so they are prepared to submit notices to EPA via CDX on the effective date of this final rule.

2. *Preparing the submission.* All submitters must use the new e-PMN software to prepare their submissions of TSCA section 5 notices. EPA is providing two different variations of the e-PMN software, one with encryption and one without encryption. The e-PMN software with encryption, available on EPA's CDX website (*http://cdx.epa.gov/epa_home.asp*), accommodates electronic submission through CDX. The e-PMN software without encryption is available through EPA's TSCA New Chemicals Program website (*http://www.epa.gov/oppt/newchems*). Both variations of the e-PMN software are available free of charge as Internet downloads. The e-PMN software

without encryption will also be available on optical discs provided by the Agency upon request (See Unit III.H. for more detail.).

The e-PMN software guides users through the process of creating a PMN submission on their computers. Once a user completes the relevant data entry, the software will validate the submission by performing basic error checks and making sure all the required fields are completed, allow the user to create and save the submission for company records, and prompt users to choose a submission method.

3. *Completing the submission to EPA.* During the 2–year phase-in period when paper and/or optical disc submission will still be allowed, the software will, as appropriate, also allow the user to choose ''Print,'' ''Save as a PDF,'' ''Save as an XML file'' for a submission on an optical disc, or ''Transmission through CDX.'' While permitted, submissions made in paper or using an optical disc will need to be mailed or delivered to EPA in the same manner that they are currently. When ''Transmission through CDX'' is selected, the user will be asked to provide the user name and password that were created during the CDX registration process. The software will then encrypt the file and submit it via CDX to EPA.

F. What is the Electronic Signature Agreement for the e-PMN?

In order to submit electronically to EPA via CDX, submitters of all TSCA section 5 documents must first register with CDX. One must register either as:

1. An AO of a company who can send all types of TSCA section 5 documents to EPA via CDX or

2. Someone authorized by the AO to send TSCA section 5 supporting documents to EPA via CDX. Note, however, that AOs are the only persons allowed to send TSCA section 5 notices and Letters of Support to EPA via CDX.

There are two ways that joint submissions can be submitted to EPA via CDX. The first way is for each joint submitter to fill out his or her portion of the submission in separate notice forms. These forms are linked to each other within EPA via a common identifying number—a ''TS'' number (See regulatory text language in 40 CFR 700.45(e)(3).)—which both companies are required to develop together and put on their respective forms. The second way is for one of the joint submitters to provide supporting information in a Letter of Support. Both will require the AOs of the joint submitting companies to register in order to submit to EPA via CDX.

To register in CDX, the CDX registrant (also referred to as ''Electronic Signature Holder'' or ''Public/Private Key Holder'') downloads two forms: The Electronic Signature Agreement and the ''Verification of Company Authorizing Official'' form. Registration enables CDX to perform two important functions: Authentication of identity and verification of authorization. Within the ''Electronic Signature Agreement'' form, the AO agrees to certain CDX security conditions. On the ''Verification of Company Authorizing Official'' form, the AO designates himself or herself as the AO and attests to the completeness and accuracy of the submitted information.

There is a third form generated by CDX that the AO needs to fill out if the AO wants to authorize other persons to submit support documents on his or her behalf, including a paid employee of the company, an outside consultant for the company, or an authorized representative agent for the company. This form is entitled, ''Authorization and Verification for Section 5 Notice Support Submitter by Company Authorizing Official.'' On this form, the AO designates various persons to submit support documents on his or her behalf, and attests to the completeness and accuracy of the submitted information. Persons designated by the AO to submit on his or her behalf must also sign this form along with the Electronic Signature Agreement form, in order to be ''linked'' to the AO by EPA; and therefore, be able to submit support documents via CDX on the AO's behalf.

When these forms described in Unit III.F. are received, EPA activates the submitter's registration in CDX and sends him or her an e-mail notification. Submitters will need to complete and sign these forms only once.

G. Will CBI be Protected When Submitting via CDX?

Yes. EPA will ensure secure transmission of PMN data sent from the user's desktop through the Internet via the Transport Layer Security (TLS) 1.0 protocol. TLS 1.0 is a widely used approach for securing Internet transactions, and is endorsed by the National Institute of Standards and Technology (NIST) for protecting data sent over the Internet. See NIST Special Publication 800–52, ''Guidelines for the Selection and Use of Transport Layer Security (TLS) Implementations,'' *http://csrc.nist.gov/publications/nistpubs/800-52/SP800-52.pdf.*

In addition, e-PMN software supports EPA's CROMERR requirements, as described under 40 CFR part 3, by enabling the submitter to electronically sign, encrypt, and submit submissions which EPA subsequently provides back to the submitter as an unaltered copy of record. This assures the submitter that the Agency has received exactly what the submitter sent to EPA. The current version of the e-PMN encrypts using Federal Information Processing Standards (FIPS)-validated RSA BSAFE Crypto-J. EPA may incorporate other encryption modules into future versions of e-PMN. Information submitted via CDX is processed within EPA by secure systems certified for compliance with FIPS.

H. Will EPA Make a Version of the Software Without Encryption Available for Users Who Want to Obtain the Software Without Registering via CDX?

Yes. EPA is providing two different variations of the e-PMN software, one with encryption and one without encryption. The e-PMN software with encryption, available on EPA's CDX website (*http://cdx.epa.gov/epa_home.asp*), accommodates electronic submission through CDX. This software contains an application program interface that allows the submitter to interact with CDX to encrypt the submission using FIPS-validated RSA BSAFE Crypto-J. The encryption software is subject to restrictions under the Export Administration Act of 1979, Public Law 96–72, 93 Stat. 503, as amended. Making this e-PMN software with encryption available only through EPA's CDX website will enable EPA to restrict and monitor the issuance of this ''Encryption Software'' according to export control requirements by requiring CDX registration before the controlled software can be downloaded.

The e-PMN software without encryption, available through EPA's TSCA New Chemicals Program website (*http://www.epa.gov/oppt/newchems*), does not contain FIPS-validated RSA BSAFE Crypto-J or the application programming interface to enable the submitter to interact with CDX to encrypt the submission.

The e-PMN software, both with and without encryption, produce identical e-PMN files; however, only by registering through CDX can the e-PMN software with encryption (containing the application program interface to encrypt submissions) be downloaded and used for sending files to EPA via CDX. Users of the e-PMN software without encryption do not have to register with CDX. The e-PMN software without encryption can be used to create a paper PMN form for submission during the first year after the effective date of this final rule, or to create a PMN file that

can be saved to an optical disc and submitted to EPA during the first 2 years after the effective date of this final rule. The software without encryption also allows users to create an e-PMN file that can be uploaded to the e-PMN software with encryption, to send to EPA via CDX.

The variations of the e-PMN software, both with and without encryption, are accessible through EPA's TSCA New Chemicals Program website (*http://www.epa.gov/oppt/newchems*). There is a link on EPA's TSCA New Chemicals Program website to EPA's CDX website (*http://cdx.epa.gov/epa_home.asp*), where users can download the e-PMN software with encryption after they register with CDX and EPA approves their registration. Units III.E. and III.F. describe how to register with CDX and the information that is necessary to provide to EPA for approval consideration. It will take EPA approximately 1 week to process and approve CDX registrations. The e-PMN software without encryption can be downloaded directly from EPA's TSCA New Chemicals Program website without CDX registration or EPA approval.

If and when EPA makes changes to the e-PMN software, an automatic download of the updated software will be triggered when a submitter opens their existing variation of the software (i.e., the with and without encryption variations). Submitters will then be required to validate their submissions with this new version before submitting to EPA. e-PMN software installed from optical discs will not automatically be updated with new versions of the software. However, EPA will keep a list of all submitters that request optical discs. If major revisions to the software are made during the first two years after the effective date of the final rule, EPA will notify these submitters of the availability of the updated software.

I. Must I Use the e-PMN Software for Any Paper or Optical Disc Submissions During the 2–Year Phase-In Period?

Yes. On the effective date of this final rule, submitters must use the e-PMN software to generate TSCA section 5 notices, NOCs, and support documents regardless of whether they are submitted via CDX, on optical disc, or in paper form (40 CFR part 720.3 defines ''support documents'' as materials and information submitted to EPA in support of a TSCA section 5 notice, including but not limited to, correspondence, amendments, and test data. The term ''support documents'' does not include orders under TSCA section 5(e) (either consent orders or orders imposed pursuant to TSCA section 5(e)(2)(B))). EPA will not accept paper submissions that use either the old version of the paper PMN form or the amended form filled in by hand or typewriter. The Agency will make available free Internet downloads or, upon request, optical discs that contain the version of e-PMN software lacking encryption. All e-PMN software users, regardless of how a document is submitted, must undergo a ''finalization'' step in generating a document. During the finalization step, the e-PMN software checks that all required fields contain information and provides warnings for certain kinds of missing, incomplete, or incorrect data. Notices submitted on paper or optical disc containing data which have not undergone finalization will be declared ''Incomplete'' by EPA. This step is necessary to allow for an accurate and efficient transfer of data from an optical disc or a paper form to the EPA data systems, and also enables the generation of a non-CBI version.

Anyone submitting the paper form generated using the e-PMN software must submit the notice to the Agency via U.S. mail or a courier service. The paper form must be hand signed on page 2. If the submitter makes any CBI claims, the original submission needs to include both the CBI version and a non-CBI version.

Optical discs must be submitted with an original hand-signed hard copy of page 2 (Certification page) and a hard copy of page 3 (a copy of page 3 is needed for contact information in the event that the optical disc is not readable). Optical discs must be delivered only by courier service, to avoid damage to the disk from the Agency's mail screening equipment.

J. How Will Electronic Submission of TSCA Section 5 Notices that Currently Have No Required or Official Forms be Handled by CDX or the e-PMN Software?

Certain TSCA section 5 notices such as LVE modifications, LoREX modifications, TMEAs, and biotechnology notices currently have no required or official forms. In order to allow for electronic and paper submission of these notices using the e-PMN software and CDX, the Agency is requiring the following:

1. For exemption modifications, submitters must use the e-PMN form by checking the ''modification'' box on page 1, filling in contact information on page 3, and including the previous exemption number and chemical identity information. A submitter may send a cover letter with the new revisions to the original exemption notice or the pertinent pages of the e-PMN form.

2. For a TMEA, the submitter will check the ''TMEA'' box on page 1 of the e-PMN form, and either fill out the form or attach a cover letter for the submission containing the information required by 40 CFR 720.38.

3. Biotechnology notices (Form 6300–07) will have their own menu option. Instead of selecting ''Premanufacture Notice,'' a submitter will select ''Biotechnology,'' which will prompt the software to present a header page to the submitter with choices of biotechnology notices, and space to fill in contact information. The information required by 40 CFR part 725 must be submitted as an attachment(s).

The notices listed in Unit III.I.1.–3. must undergo the ''finalization'' step (See Unit III.H.). An exemption submission on an optical disc must be accompanied by a complete signed hard copy of page 2 and a complete hard copy of page 3 of the e-PMN form for contact information in case the optical disc is not readable. The TMEA will only need a complete page 3. The optical discs for both types of submissions will need to be delivered by courier to the Agency to avoid damage to the optical disc from the Agency's mail screening equipment. If submitted by paper, the forms must be generated using the e-PMN software and sent to the Agency. For biotechnology notices, a signed hard copy of a biotechnology certification must accompany the optical disc. The printed form must follow the same procedures: Use the e-PMN software to generate a finalized ''header'' sheet with contact data, add an attachment with notice information, and include a signature page.

The submission process for completing the various notice and document types is summarized in Table 1 of this unit. After the effective date of this final rule, all of these notices must be prepared using the new e-PMN software.

TABLE 1.—PROCESS FOR PREPARING TSCA SECTION 5 NOTICES AND SUPPORT DOCUMENTS

TSCA Section 5 Document	Process
PMNs and SNUNs	Form 7710–25 generated and finalized by e-PMN software.
LVE	Form 7710–25 generated and finalized by e-PMN software.
LoREX TMEA	Form 7710–25 generated and finalized by e-PMN software. e-PMN software to generate finalized submission either using Form 7710–25 or cover letter and attached information.
NOC	e-PMN software to generate finalized submission using Form 7710–56.
Biotechnology notices	e-PMN software to generate finalized ''header'' sheet with contact data, add attachment with notice information, include signature page using Form 6300–07.
Modifications to previous notices	Form 7710–25 generated and finalized by e-PMN software. Fill in pages 1, 2, and 3 of the Form, plus either applicable pages of Form, cover letter, or attachment.
Support documents	e-PMN software to generate finalized ''header'' sheet identifying reason for submission and contact data.

K. How Will Submission Requirements and Delivery Methods to EPA Vary for Submissions via Paper, Optical Disc, or CDX?

Depending upon how a notice is submitted, the following submission requirements and delivery methods must be used:

1. *Paper*. Printed, signed, and ''header'' sheets for attachments; delivered by U.S. mail or courier. Allowed for the first year.

2. *Optical discs*. Data must be saved as XML files rather than as PDF files. Optical discs submitted with an original signed hard copy of page 2 (Certification page) and a hard copy of page 3. Delivered by courier only. Allowed for the first 2 years only.

3. *CDX*. Document developed on-line; simply hit ''send button'' to deliver to EPA via CDX.

L. Over What Time-Frame Will the Internet-Based CDX Reporting Requirement be Phased-In?

The Agency is introducing electronic reporting in three phases. In the first phase, the Agency is allowing the submission of TSCA section 5 notices and support documents via CDX, on optical disc, and on paper. All submissions (whether submitted via CDX, on optical disc, or on paper) must be generated using the new e-PMN software.

In the second phase, occurring 1 year after the effective date of this final rule, paper submissions will no longer be accepted for any new notices and support documents (including NOCs). In the third phase, at the end of the second year after the effective date of this final rule, optical disc submissions for all new notices and support documents will no longer be accepted. Thereafter, EPA will accept TSCA section 5 notices and support documents only through CDX. TSCA section 5 notices and support documents not submitted in the appropriate manner as set forth in 40 CFR parts 720, 721, and 725 will be considered invalid by EPA and returned to the submitter.

Note that NOCs and support documents whose original notices were submitted before the effective date of this final rule will still need to be mailed as hard copy to the Agency. This is necessary because, although the notices received after implementation of the new system will be entered into the newly created EPA database, notices submitted before the effective date of this final rule will only exist in EPA's ''legacy'' database, i.e., the database used prior to the effective date of this final rule, and so a subsequent support document will not be able to be linked up with its parent notice within EPA's new database. The phase-in schedule for submissions is displayed in Table 2 of this unit.

TABLE 2.—E-PMN PHASE-IN SCHEDULE FOR TSCA SECTION 5 NOTICES AND SUPPORT DOCUMENTS[1]

Submission Method	Before Effective Date of Final Rule	First Year After Effective Date of Final Rule	Second Year After Effective Date of Final Rule	Third Year After Effective Date of the Final Rule, and Thereafter
Paper	Existing PMN form	Scanner-friendly paper form, generated and finalized using e-PMN software	Invalid	Invalid
Optical disc	Not applicable	Electronic submission generated and finalized using e-PMN software with hard copies of pages 2 and 3	Electronic submission generated and finalized using e-PMN software with hard copies of pages 2 and 3	Invalid
CDX/Internet	Not applicable	Available and optional	Available and optional	Mandatory

[1] NOCs and support documents for notices originally submitted on paper before the effective date of this final rule must still be mailed as hard copy.

M. Will EPA Offer Any Exceptions to the e-PMN Requirements?

No. After careful consideration, the Agency has concluded that the overall benefits from everyone using the e-PMN software and submission through CDX exceed those associated with maintaining a multi-optioned reporting approach (Ref. 3). The Agency recognizes that there is the potential for costs and burden associated with predictable or unanticipated technical difficulties in electronic filing or with conversion to an electronic CDX reporting format. However, EPA expects that reduced reporting costs to submitters will ultimately exceed the transition costs and that any transition difficulties will be mitigated by:

1. The phase-in periods.
2. EPA's planned outreach and training sessions prior to the effective date of this final rule. The Agency has allowed ample time between the date of publication and the effective date of this final rule for submitters to install and become proficient with the e-PMN software.
3. EPA's technical support following the effective date of this final rule.

N. Will All Types of TSCA Section 5 Notices and Communications be Submitted via e-PMN Software?

At this time, the Agency does not have electronic reporting capability for all TSCA section 5-related notices (i.e., *Bona Fide* Intent to Manufacture (*bona fide*) notices and polymer exemption annual reports); support documents (i.e., TSCA section 5(e) consent orders or orders imposed pursuant to TSCA section 5(e)(2)(B)); and certain communications (e.g., pre-notice communications and TSCA Inventory Correspondence), due to the variability and infrequent nature of these types of submissions. EPA may consider offering electronic reporting of these and other submissions in the future.

IV. Response to Comments

The Agency received comments from three persons on the proposed rule. Copies of all comments received are available in the public docket for this action. The comments received on the proposed rule did not result in EPA making significant changes to the final rule. A discussion of the comments germane to the rulemaking and the Agency's responses follow:

1. *Comment*—i. *Response to Two Questions Listed in Unit V. of the Proposed Rule*. Unit V. of the proposed rule identified two issues on which the Agency was specifically requesting public comment. These issues were:

- Whether the proposed 2–year phase-in period following the effective date of the final rule, during which time paper and/or optical disc submissions would be accepted, is reasonable or necessary to allow sufficient time to transition to the new Internet-based method.
- Did industry have information that could further inform EPA's estimate regarding burden. For example, EPA asked whether submitters intended on submitting notices via CDX as soon as it becomes available, or if not, when during the 2–year phase-in period would they expect to begin using CDX?

The public comments overwhelmingly supported the 2–year phase-in period following the effective date of the final rule. Commenters agreed that the 2–year phase-in period is reasonable and necessary to allow sufficient time for transition to the new electronic reporting method.

Although, EPA did not receive any comments directly related to its burden estimate, EPA did receive positive feedback on the proposed electronic submittal system. Commenters strongly supported the Agency's effort to move to electronic methods of information gathering. Commenters agreed with the Agency's statements that this change will allow for more effective and efficient reviews of TSCA section 5 notices and that the changes will improve communication with submitters. One commenter appreciated aspects of the e-PMN software such as the ability of the e-PMN software to check for completeness of a PMN submission and create non-CBI versions of notices. Another commenter was pleased to see the addition of the new User Fee Payment Identity Number field to track payments.

ii. *Response*. EPA retained the 2–year phase-in period for electronic submissions which is supported by the comments received. EPA did not receive any comments directly related to its burden estimate and therefore did not revise the estimate.

2. *Comment*—i. *Dedicated technical assistance*. EPA received comments regarding the importance of providing robust technical assistance both during and after the 2–year transition period. Commenters requested that Agency resources be available for quickly resolving any software problems. One commenter asked that the technical assistance contacts be knowledgeable about both the system software as well as the PMN TSCA section 5 process.

ii. *Response*. EPA will provide dedicated technical assistance to help submitters. For help with CDX registration, submitters can contact the CDX Help Desk. Submitters will be able to call the TSCA Hotline for help with basic questions on the TSCA section 5 process. For answers to more complex questions, the TSCA Hotline will be equipped to refer callers to EPA technical staff experienced with the e-PMN software and TSCA section 5. Contact information for the TSCA Hotline, CDX Help Desk, and relevant EPA staff are available through EPA's TSCA New Chemicals Program website (*http://www.epa.gov/oppt/newchems*). EPA will not, however, have a designated hotline staffed with experts who can provide both system software assistance on CDX and the e-PMN and respond to detailed TSCA section 5 process questions.

3. *Comment*—i. *Non-routine information and the e-PMN form*. One commenter asked how EPA would handle non-routine information that the submitter may need to report on the electronic form, but for which there is no standardized field. The commenter asked that EPA provide consistent and informed guidance for handling these situations for which a workaround may be needed.

ii. *Response*. A submitter who is unable to enter the necessary information on the e-PMN form can contact the TSCA Hotline and/or EPA technical experts for assistance. EPA will work with submitters on how to express non-routine information on the e-PMN form on a case-by-case basis. The ''Helpful Hints: Q and A for Use of the e-TSCA/e-PMN Submission Software,'' accessible via EPA's TSCA New Chemicals Program website (*http://www.epa.gov/oppt/newchems*), addresses workaround issues that EPA has encountered to date. EPA will update the Q and A on a regular basis with new issues and solutions to those issues as they arise.

4. *Comment*—i. *Who will be able to use the electronic submission process?* One commenter requested that EPA clarify whether the e-PMN form will be available only to the manufacturer or importer, or whether consultants will be able to prepare and submit PMNs and other TSCA section 5 submissions on behalf of clients as well.

ii. *Response*. Consultants will not be able to submit PMN notices or Letters of Support. Only the AO for the client, registered with CDX, can submit PMN notices and/or Letters of Support. However, a consultant will be able to submit all other support documents on behalf of the client as long as the consultant is:

- Registered in CDX.
- Authorized by the AO in CDX to submit documents on the client's behalf.

EPA will be using a two-tiered approach for registration and submission of PMNs. The first tier is the company AO, who, for the purposes of EPA's CROMERR and this final rule, is the person who certifies and signs the notice. The second tier will be comprised of persons designated and authorized by the company's AO to submit supporting documents.

The AO has the ability to submit all documents on the company's behalf via CDX. During CDX registration, all AOs will be required to fill out two forms: The ''Electronic Signature Agreement'' form in which the AO agrees to certain CDX security conditions and the ''Verification of Company Authorizing Official'' form in which the AO designates himself or herself as the AO and attests to the completeness and accuracy of the submitted information.

There is a third form generated by CDX that the AO needs to fill out if the AO wants to authorize other persons to submit support documents on his or her behalf. This form is entitled, ''Authorization and Verification for Section 5 Notice Support Submitter by Company Authorizing Official.'' On this form, the AO designates various persons to submit support documents on his or her behalf, and attests to the completeness and accuracy of the submitted information. Persons designated by the AO to submit on his or her behalf must also sign this form in order to be ''linked'' to the AO by EPA; and therefore, be able to submit support documents via CDX on the AO's behalf. Note, that a client, or company, can have multiple AO's.

The approach described in Unit IV.4. was discussed in the preamble of the proposed rule. To clarify the different responsibilities of the AO and persons designated to submit support documents on the AO's behalf, EPA has added regulatory text at 40 CFR 720.40(e)(3)(i) and (ii).

5. *Comment*—i. *Downloading e-PMN software*. One commenter had a question about downloading the e-PMN software. The commenter was concerned that only individuals within a company could download the software from the EPA site onto their individual computers, as opposed to a single download onto a company network. The commenter expressed the opinion that the system should allow for shared software on a computer network.

ii. *Response*. The e-PMN software is designed to be used either as a stand-alone program on an individual's computer or as a shared system on a company's LAN. Many users may access the program at the same time. Upon request, EPA will also provide the software to a company on optical disc.

6. *Comment* —i. *Barrier for small and foreign businesses*. One commenter suggested that for smaller companies, especially those outside the United States where English is not the primary language, the requirements to register on EPA's CDX and to use the electronic reporting software could be overly burdensome. They recommended that EPA develop an on-line training module to help address this potential problem.

ii. *Response*. EPA has options to aid small and foreign businesses. These companies can utilize the 2–year phase period to familiarize themselves with sending documents via CDX, during which time they may still submit information on paper or optical disc for the first year, and on optical disc for the second year. These companies will also be able to call the TSCA Hotline, CDX Help Desk, and EPA technical staff for help with basic questions. Note, that 40 CFR 720.22(a)(3) states that, ''Only manufacturers that are incorporated, licensed, or doing business in the United States may submit a notice.'' Foreign entities not meeting the requirement of 40 CFR 720.22(a)(3), however, may submit Letters of Support (See also response to comment 7. in this unit.).

7. *Comment* —i. *Capability for collaborative efforts with third parties*. Many companies, particularly smaller businesses, use third parties, such as consultants or law firms, in the preparation of TSCA section 5 notices. As such, one commenter suggested that the e-PMN process should be capable of allowing collaborative efforts with these parties and should be as ''user-friendly'' as possible. The commenter was concerned that the process could increase burden for smaller companies by requiring the company to cut and paste input from the third party into the company's final electronic submission.

ii. *Response*. EPA believes the new e-PMN form is as ''user-friendly'' for collaborating with third parties as the current form. To work with a third party, the notice preparer will create the draft e-PMN file. This file is essentially a folder, i.e., one unit made up of many documents. The preparer may send the file (which includes the attachments as a part of the file structure) to the third party electronically, via e-mail, or they can save the file onto an optical disc for mailing. This is similar to the current way of doing business using the electronic Adobe PMN. There is, however, no process in place to use CDX to exchange files between e-PMN users, i.e., the preparer and a third party. CDX is only for exchange of information between a submitter and EPA.

8. *Comment* —i. *Linkage with computer models*. One commenter recommended that the program have the ability to link the output of the Sustainable Future's computer modeling and other EPA modeling directly into the e-PMN form.

ii. *Response*. The xml schema for the e-PMN is available for anyone to use to create a program to download data from other models or databases into the e-PMN form. Upon installation of the e-PMN software a program folder called ''eTSCA'' is created. Within the eTSCA program folder is another folder called ''user.'' The schema is available in the eTSCA/user folder, entitled ''eTSCA_v1.0.xsd.''

9. *Comment* —i. *Unique circumstances that may not easily fit within electronic reporting requirements*. One commenter noted that there are unique circumstances that may not easily fit within electronic reporting requirements. An example given by the commenter was in regards to submitters that work with companies who file Letters of Support for a PMN, where the information provided by the supporting company is not revealed to the PMN submitter. Under current business practices, the company providing the Letter of Support discloses the trade secret information that is necessary to complete the PMN directly to the Agency. The commenter expressed concern that if those companies have difficulty with the requirement to register for CDX, and need to gain expertise with the software only to submit what may be a few data points, it could impede or block the PMN completion process.

ii. *Response*. EPA will remain attentive to these unique circumstances and work to develop workable processes. EPA will consider providing additional outreach tailored to answer the questions and meet of the needs of unique submitter groups. For assistance with CDX, submitters can call the CDX Help Desk. For e-PMN or TSCA section 5 process questions, submitters can call either the TSCA Hotline or the appropriate EPA technical experts.

V. Estimated Economic Impact

The Agency's evaluation of the economic impact of this final rule is present in a document entitled ''Economic Analysis of the Amendments to TSCA Section 5 Premanufacture and Significant New Use Notification Requirements Final Rule'' (Ref. 3), a copy of which is available in the docket and is briefly summarized in this unit. EPA estimates

that the electronic submission of TSCA section 5 notices and support documents will reduce the burden and cost currently associated with the paper-based reporting of TSCA section 5 notices and support documents. The burden estimation of 95 to 114 hours to complete the currently existing paper PMN form includes the time spent reading and becoming familiar with the form, gathering the required information and preparing the report, producing non-CBI responses for items claimed as CBI, and maintaining a file of the submission (Ref. 4).

In its economic analysis for the final rule (Ref. 3), EPA estimated cost and burden savings at the industry level, at the individual company level, and on a per-form basis. Estimates presented in this unit are for all TSCA section 5 notices; estimates for PMNs separately can be found in the economic analysis.

At the industry level for all TSCA section 5 notices, EPA estimates a net total burden decrease of 14,972 hours in the first year of the final rule, 15,700 hours in the second year of the final rule, and 16,178 hours in the third year of the final rule. Industry savings are estimated at 16,187 hours per year for subsequent years of the final rule. At the company level for all TSCA section 5 notices, EPA estimates an average net total burden decrease of 50.4 hours in the first year of the final rule, 51.2 hours in the second and third years of the final rule, and 50.4 hours per year for subsequent years of the final rule.

At the industry level for all TSCA section 5 notices, EPA estimates a net cost savings of $379,271 in the first year of the final rule, $424,863 in the second year of the final rule, and $457,066 in the third year of the final rule. Industry savings are estimated at $457,628 per year for subsequent years of the final rule. When taking into account the lower total number of TSCA section 5 notices expected during this 3–year Information Collection Request (ICR) period in addition to savings attributable to the final rule, the average annual reduction in industry costs is $5.7 million. At the company level for all TSCA section 5 notices, EPA estimates an average cost savings of $1,352 in the first year of the final rule, $1,396 in the second and third years of the final rule, and $1,352 in subsequent years of the final rule.

EPA estimates that the Agency also will experience a reduction in both burden and cost to administer the TSCA section 5 premanufacture notification program as a result of the final rule. Specifically, EPA expects to experience a net burden reduction of 4,521 hours in the first year of the final rule, a reduction of 9,042 hours in the second year of the final rule, and a reduction of 13,563 hours in the third and subsequent years of the final rule. The Agency expects to experience a net savings of $214,377 in the first year of the final rule, a net savings of $586,108 in the second year of the final rule, and a net savings of $1,057,838 in the third and subsequent years of the final rule.

EPA recognizes that information and feedback received during the 2–year phase-in period, along with experience gained during this phase-in period, can be used to further improve the use of the new Internet-based reporting mechanism. This information will also inform the Agency's estimates, which will be reflected in the ICR, which EPA must complete every 3 years under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*.

VI. References

The following is a listing of the documents referenced in this preamble that have been placed in the public docket for this final rule under docket ID number EPA–HQ–OPPT–2008–0296, which is available for inspection as specified under **ADDRESSES**.

1. EPA. TSCA Section 5 Premanufacture and Significant New Use Notification Electronic Reporting; Revisions to Notification Regulations; Proposed Rule. **Federal Register** (73 FR 78261, December 22, 2008) (FRL–8395–8). Available on-line at: *http://www.gpoacess.gov/fr/index.html*.

2. EPA. Cross-Media Electronic Reporting; Final Rule. **Federal Register** (70 FR 59847, October 13, 2005) (FRL–7977–1). Available on-line at: *http://www.gpoacess.gov/fr/index.html*.

3. EPA. Economic and Policy Analysis Branch, Office of Pollution Prevention and Toxics (OPPT). Economic Analysis of the Amendments to TSCA Section 5 Premanufacture and Significant New Use Notification Requirements Final Rule. July 13, 2009.

4. EPA. Regulatory Impacts Branch, OPPT. Regulatory Impact Analysis of Amendments to Regulations for TSCA Section 5 Premanufacture Notifications. September 9, 1994.

5. EPA. Supporting Statement for a Request for OMB Review Under The Paperwork Reduction Act. Information Collection Request (ICR): New Information Collection Activities Related to Electronic Submission of Certain TSCA Section 5 Notices EPA ICR No. 2327.02. OMB Control No. 2070–0173.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive Order.

B. Paperwork Reduction Act

The information collection requirements contained in this final rule have been submitted for OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. The ICR document prepared by EPA, identified under EPA ICR No. 2327.02 and OMB control number 2070–0173, is available in the docket for the final rule (Ref. 5). The information collection requirements described in the final rule are not enforceable until OMB approves them.

This rule-related ICR covers amendments to existing reporting and recordkeeping programs that are approved under OMB control numbers 2070–0012 and 2070–0038. The final rule amends these existing information collections in two ways. First, respondents will be required to use the e-PMN software to generate TSCA section 5 notices and support documents. After a 2–year phase-in period following the effective date of this final rule, respondents will be required use the e-PMN software to submit this information to EPA electronically via the Agency's CDX. Second, respondents will be required to provide a new data element, a User Fee Payment Identity Number, when preparing and submitting TSCA section 5 notices and support documents.

The information collection activities contained in this final rule are designed to assist the Agency in meeting its responsibility under TSCA to receive, process, and review TSCA section 5 notices and support documents in a timely manner and further the proper performance of the functions of the Agency. Information collection for review of PMNs and all other TSCA section 5 notices and support documents is authorized by TSCA section 5 and confidentiality of submitted information is protected under TSCA section 14.

Responses to the collection of information are mandatory. Respondents will be required to use the e-PMN software to generate, complete, and, ultimately, submit the form. The methods for submitting the completed form to EPA will change over a 2–year period following the effective date of

this final rule to allow for the new required submission through CDX to be fully implemented. In the third year after the effective date of this final rule, all TSCA section 5 notices and support documents must be submitted to EPA electronically via CDX using the e-PMN software.

The ICR document for this final rule provides a detailed presentation of the estimated burden and costs for 3 years of the program. The aggregate burden varies by year during the first 3 years of the final rule because of the phase-in schedule of the requirements. The rule-related burden and cost to chemical manufacturers, importers, and processors who would submit notices to the Agency for review is summarized here. The projected total burden to industry is 363 hours per year for the first 3 years of the final rule. This includes an estimated average burden per response of 0.9 hours for CDX registration, 1.8 hours for requesting a CDX electronic signature, 0.1 hours for establishing an account for electronic fee payments, and 0.8 hours for final rule familiarization. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. After approval of this rule-related ICR by OMB, the Agency will amend the existing ICRs (OMB control numbers 2070–0012 and 2070–0038) to reflect the new information collection activities and resulting changes in burden. Upon OMB's approval of the amendments to the existing, approved ICRs, EPA will discontinue the ICR approved under OMB control number 2070–0173.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this final rule will not have a significant adverse economic impact on a substantial number of small entities, due to the burden-reducing nature of this action which will benefit all submitters regardless of the size of the entity.

Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of this action on small entities, small entity is defined as:

1. A small business as defined by the Small Business Administration's (SBA) 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.

3. A small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant adverse economic impact on a substantial number of small entities, among other reasons, an agency may certify that a rule will not have a significant adverse 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 final rule is expected to reduce the existing regulatory burden. The factual basis for the Agency's certification under the RFA is presented in the small entity impact analysis prepared as part of the Economic Analysis for this final rule (Ref. 3), and is briefly summarized in Unit IV.

D. Unfunded Mandates Reform Act

Based on EPA's experience with past PMNs and SNUNs, State, local, and tribal governments have not been affected by these reporting requirements, and EPA does not have any reason to believe that any State, local, or tribal government will be affected by this final rule. As such, EPA has determined that this regulatory action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132

Under Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this final rule does not have ''federalism implications'' because 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 the Executive Order. This final rule will establish electronic notification requirements that apply to manufacturers (including importers) and processors of certain chemical substances. This final rule will not apply directly to States and localities and will not affect State and local governments. Thus, Executive Order 13132 does not apply to this final rule.

F. Executive Order 13175

Under Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000), EPA has determined that this final rule does not have tribal implications because it will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in the Executive Order. EPA has no information to indicate that any tribal government manufactures or imports the chemical substances covered by this action. Thus, Executive Order 13175 does not apply to this final rule.

G. Executive Order 13045

This final rule will not require special consideration pursuant to the terms of Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because it is not likely to have an annual effect on the economy of $100 million or more, nor does it establish an environmental standard, or otherwise have a disproportionate effect on children.

H. Executive Order 13211

This final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this final rule does not have any significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (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 impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, etc.) that are developed or adopted by voluntary consensus standards bodies. This final rule will not impose any technical standards that will require EPA to consider any voluntary consensus standards.

J. Executive Order 12898

This final rule will not have an adverse impact on the environmental

and health conditions in low-income and minority communities. Therefore, under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency does not need to consider environmental justice-related issues.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Parts 700, 720, 721, 723, and 725

Environmental protection, Chemicals, Electronic reporting, Hazardous substances, Reporting and recordkeeping requirements.

Dated: December 22, 2009.

Stephen A. Owens,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 700—[AMENDED]

■ 1. The authority citation for part 700 is revised to read as follows:

Authority: 15 U.S.C 2625 and 2665, 44 U.S.C. 3504.

■ 2. Section 700.45 is amended by revising paragraphs (e)(1) through (e)(3); (e)(4)(i), (ii), and (iv); and (e)(5)(i), (ii), and (iv) to read as follows:

§ 700.45 Fee payments.

* * * * *

(e) * * *

(1) Each remittance under this section shall be in United States currency and shall be paid by money order, bank draft, wire transfer, Pay.gov service provided through the Department of the Treasury, or check drawn to the order of the Environmental Protection Agency.

(2) Each paper remittance shall be sent to the Environmental Protection Agency, Washington Finance Center, Toxic Substances Control Act User Fees, P.O. Box 979073, St. Louis, MO 63197–9000.

(3) Persons who submit a TSCA section 5 notice shall place an identifying number and a payment identity number on the front page of each TSCA section 5 notice submitted. The identifying number must include the letters ''TS'' followed by a combination of 6 numbers (letters may be substituted for some numbers). The payment identity number may be a check number, a wire transfer number, or a ''Pay.gov'' transaction number used to transmit the user fee. The same TS number and the submitter's name must appear on the corresponding fee remittance under this section. If a remittance applies to more than one TSCA section 5 notice, the person shall include the name of the submitter and a new TS number for each TSCA section 5 notice to which the remittance applies, and the amount of the remittance that applies to each notice. Any remittance not having the identifying name and numbers described in this paragraph will be returned to the remitter.

(4)(i) Each person who remits the fee identified in paragraph (b)(1) of this section for a PMN, consolidated PMN, intermediate PMN, or significant new use notice shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b).'' under ''CERTIFICATION'' on page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710–25).

(ii) Each person who remits the fee identified in paragraph (b)(1) of this section for an exemption application under TSCA section 5(h)(2) shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b).'' in the exemption application.

* * * * *

(iv) Each person who remits the fee identified in paragraph (b)(1) of this section for a MCAN for a microorganism shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b).'' in the certification required in § 725.25(b) of this chapter.

(5)(i) Each person who remits a fee identified in paragraph (b)(2) of this section for a PMN, consolidated PMN, intermediate PMN, or significant new use notice shall insert a check mark for the statement, ''The company named in part 1, section A has remitted the fee specified in 40 CFR 700.45(b).'' under ''CERTIFICATION'' on page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710–25).

(ii) Each person who remits a fee identified in paragraph (b)(2) of this section for an exemption application under TSCA section 5(h)(2) shall insert a check mark for the statement, ''The company named in part 1, section A has remitted the fee specified in 40 CFR 700.45(b).'' in the exemption application.

* * * * *

(iv) Each person who remits the fee identified in paragraph (b)(1) of this section for a MCAN for a microorganism shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $100 in accordance with 40 CFR 700.45(b).'' in the certification required in § 725.25(b) of this chapter.

* * * * *

PART 720—[AMENDED]

■ 3. The authority citation for part 720 continues to read as follows:

Authority: 15 U.S.C 2604, 2607, and 2613.

■ 4. Section 720.3 is amended by adding paragraphs (ii), (jj), (kk), and (ll) to to read as follows:

§ 720.3 Definitions.

* * * * *

(ii) *Central Data Exchange* or *CDX* means EPA's centralized electronic document receiving system, or its successors.

(jj) *e-PMN software* means electronic-PMN software created by EPA for use in preparing and submitting Premanufacture Notices (PMNs) and other TSCA section 5 notices and support documents electronically to the Agency.

(kk) *Optical disc* means compact disc (CD) or digital video disc (DVD).

(ll) *Support documents* means materials and information submitted to EPA in support of a TSCA section 5 notice, including but not limited to, correspondence, amendments, and test data. The term ''support documents'' does not include orders under TSCA section 5(e) (either consent orders or orders imposed pursuant to TSCA section 5(e)(2)(B)).

■ 5. Section 720.40 is amended by revising paragraphs (a)(2), (c), (d)(2), and (e) to read as follows:

§ 720.40 General.

(a) * * *

(2) All notices must be submitted on EPA Form 7710–25. Notices, and any support documents related to these notices, may only be submitted in a manner set forth in this paragraph.

(i) *Paper-based submissions*. Notices, and any support documents related to these notices, may be submitted on paper on or before April 6, 2011. All paper-based notices must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print EPA Form 7710–25 for submission to EPA. Paper notices, and any support documents related to such notices, must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(A) Support documents for notices that are submitted before April 6, 2010 must be submitted on paper either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(B) [Reserved]

(ii) *Submissions on optical disc*—(A) Notices may be submitted as electronic files on optical disc on or before April 6, 2012. All notices submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic notices must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(B) Persons submitting on optical disc must also complete and submit on paper the Certification and Submitter Identification sections of EPA Form 7710–25.

(iii) *Submissions via CDX*. Notices and any related support documents may be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such notices must be generated and completed on EPA Form 7710–25 using e-PMN reporting software. To obtain a version of e-PMN software that contains an encryption module you must register with CDX. A version without encryption may be downloaded without registering with CDX.

(iv) You can obtain the e-PMN software as follows:

(A) *Website*. Go to EPA's TSCA New Chemicals Program website at *http://www.epa.gov/oppt/newchems* and follow the appropriate links.

(B) *Telephone*. Call the EPA CDX Help Desk at 1–888–890–1995.

(C) *E-mail*. *HelpDesk@epacdx.net*.

* * * * *

(c) *Where to submit a notice or support documents*. For submitting notices or support documents via CDX, use the e-PMN software. Paper notices or support documents must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004. Optical discs containing electronic notices or support documents must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004. Persons submitting on optical disc must also complete and submit on paper the Certification and Submitter Identification sections of EPA Form 7710–25.

(d) * * *

(2) If information is claimed as confidential pursuant to § 720.80, a person who submits a notice to EPA in the manner set forth in § 720.40(a)(2)(i), (ii), or (iii) must also provide EPA with a sanitized copy.

(e) *Agency or joint submissions*—(1) A manufacturer or importer may designate an agent to assist in submitting the notice. If so, only the manufacturer or importer, and not the agent, signs the certification on the form.

(2) A manufacturer or importer may authorize another person, (e.g., a supplier or a toll manufacturer) to report some of the information required in the notice to EPA on its behalf. The manufacturer or importer should indicate in a cover letter accompanying the notice which information will be supplied by another person and must identify that other person as a joint submitter where indicated on their notice form. The other person supplying information (i.e., the joint submitter) may submit the information to EPA using either the notice form or a Letter of Support, except that if the joint submitter is not incorporated, licensed, or doing business in the United States, the joint submitter must submit the information to EPA in a Letter of Support only, not in a notice form. The joint submitter must indicate in the notice or Letter of Support the identity of the manufacturer or importer. Any person who submits a notice form or Letter of Support for a joint submission must sign and certify the notice form or Letter of Support.

(3) Only the Authorized Official (AO) of a company can submit all TSCA section 5 documents.

(i) The AO can authorize other persons to submit only support documents on their behalf.

(ii) To authorize a support registrant to submit support documents, both the AO and support registrant must sign the ''Authorization and Verification for Section 5 Notice Support Submitter by Company Authorizing Official'' available from the CDX website at *http://cdx.epa.gov/epa_home.asp*.

* * * * *

■ 6. Section 720.65 is amended by revising the section heading and paragraphs (a) and (c)(1)(iv) and adding paragraph (c)(x) to read as follows:

§ 720.65 Acknowledgement of receipt of a notice; errors in the notice; incomplete submissions; and false and misleading statements.

(a) *Notification to the submitter*. EPA will acknowledge receipt of each notice by sending a letter via CDX or U.S. mail to the submitter that identifies the premanufacture notice number assigned to the new chemical substance and date on which the review period begins. The review period will begin on the date the notice is received by the Office of Pollution Prevention and Toxics Document Control Officer. The acknowledgment does not constitute a finding by EPA that the notice, as submitted, is in compliance with this part.

* * * * *

(c) * * *

(1) * * *

(iv) The submitter does not submit the notice in the manner set forth in § 720.40(a)(2).

* * * * *

(x) The submitter does not include an identifying number and a payment identity number as required by 40 CFR 700.45(e)(3).

* * * * *

■ 7. Section 720.75 is amended by revising paragraphs (b)(2) and (e)(1) and adding paragraphs (b)(3) and (b)(4) to read as follows:

§ 720.75 Notice review period.

* * * * *

(b) * * *

(2) A request for suspension may only be submitted in a manner set forth in this paragraph. The request for suspension also may be made orally, including by telephone, to the submitter's EPA contact for that notice, subject to paragraph (b)(3) of this section.

(i) *Older notices*. Requests for suspension for premanufacture notices submitted before April 6, 2010 must be submitted on paper either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(ii) *Newer notices*. For notices submitted on or after April 6, 2010, EPA will accept requests for suspension only if submitted in accordance with this paragraph:

(A) Requests for suspension may be submitted on paper on or before April 6, 2011. All paper-based requests for suspension must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the request for suspension for submission to EPA. Paper requests for suspension must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(B) Requests for suspension may be submitted as electronic files on optical disc on or before April 6, 2012. All requests for suspension submitted as electronic files on optical disc generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the request for suspension for submission to EPA. Paper requests for suspension must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(C) Requests for suspension may be submitted electronically to EPA via CDX. Such requests must be generated and completed using e-PMN reporting software. See § 720.40(a)(2)(iv) for information on how to obtain e-PMN software.

(3) An oral request for suspension may be granted by EPA for a maximum of 15 days only. Requests for a longer suspension must only be submitted in the manner set forth in this paragraph.

(4) If the submitter has not made a previous oral request, the running of the notice review period is suspended as of the date of receipt of the written paper request, electronic request on optical disc, or CDX submission by EPA.

* * * * *

(e) * * *

(1) A submitter may withdraw a notice during the notice review period by submitting a statement of withdrawal in a manner set forth in this paragraph. The withdrawal is effective upon receipt of the written paper request, electronic request on optical disc, or CDX submission by EPA.

(i) *Older notices*. Statements of withdrawal for premanufacture notices submitted before April 6, 2010 must be submitted on paper either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(ii) *Newer notices*. For notices submitted on or after April 6, 2010, EPA will accept statements of withdrawal only if submitted in accordance with this paragraph:

(A) Statements of withdrawal may be submitted on paper on or before April 6, 2011. All paper-based statements of withdrawal must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the statement of withdrawal for submission to EPA. Paper statements of withdrawal must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(B) Statements of withdrawal may be submitted as electronic files on optical disc on or before April 6, 2012. All statements of withdrawal submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic statements of withdrawal must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(C) Statements of withdrawal may be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such statements of withdrawal must be generated and completed using e-PMN reporting software. See § 720.40(a)(2)(iv) for information on how to obtain e-PMN software.

* * * * *

■ 8. Section 720.80 is amended by revising paragraph (b)(2)(i) to read as follows:

§ 720.80 General provisions.

* * * * *

(b) * * *

(2) * * *

(i) The notice and attachments must be complete. The submitter must designate that information which is claimed as confidential in the manner prescribed on the notice form, via EPA's e-PMN software. See § 720.40(a)(2)(iv) for information on how to obtain e-PMN software.

* * * * *

■ 9. Section 720.102 is amended by revising paragraphs (c)(1) introductory text and (d) to read as follows:

§ 720.102 Notice of commencement of manufacture or import.

* * * * *

(c) * * *

(1) The notice must be submitted on EPA Form 7710–56, which is available as part of EPA's e-PMN software. See § 720.40(a)(2)(iv) for information on how to obtain e-PMN software. The form must be signed and dated by an Authorized Official (AO). All information specified on the form must be provided. The notice must contain the following information:

* * * * *

(d) *Where to submit.* All notices of commencement must be submitted to EPA on EPA Form 7710–56. Notices may only be submitted in a manner set forth in this paragraph.

(1) *Older notices.* Notices of commencement for premanufacture notices submitted before April 6, 2010 must be submitted on paper either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(2) *Newer notices.* For premanufacture notices submitted on or after April 6, 2010, EPA will accept notices of commencement only if submitted in accordance with this paragraph:

(i) Notices of commencement may be submitted on paper on or before April 6, 2011. All paper-based notices of commencement must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the notice of commencement for submission to EPA. Paper notices of commencement must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(ii) Notices of commencement may be submitted as electronic files on optical disc on or before April 6, 2012. All notices of commencement submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic notices of commencement must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(iii) Notices of commencement may be submitted electronically to EPA via CDX on or after April 6, 2010. After April 6, 2012 all notices of commencement must be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such notices of commencement must be generated and completed using e-PMN reporting software. See § 720.40(a)(2)(iv) for information on how to obtain e-PMN software.

PART 721—[AMENDED]

■ 10. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 11. Section 721.25 is amended by revising paragraph (c) to read as follows:

§ 721.25 Notice requirements and procedures.

* * * * *

(c) EPA will process the notice in accordance with the procedures of part 720 of this chapter, except to the extent they are inconsistent with this part.

* * * * *

■ 12. Section 721.30 is amended by revising paragraph (b) introductory text to read as follows:

§ 721.30 EPA approval of alternative control measures.

* * * * *

(b) Persons submitting a request for a determination of equivalency to EPA under this part, unless allowed by 40 CFR 720.40(a)(2)(i), (ii), or (iii), must submit the request to EPA via EPA's Central Data Exchange (CDX) using EPA-provided e-PMN software in the manner set forth in 40 CFR 720.40(a)(2). See 40 CFR 720.40(a)(2)(iv) for information on how to obtain e-PMN software. Support documents related to these requests must be submitted in the manner set forth in 40 CFR 720.40(a)(2)(i), (ii), or (iii). If submitted by paper, requests must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; ATTN: SNUR Equivalency Determination or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004; ATTN: SNUR Equivalency Determination. Optical discs containing electronic requests must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004; ATTN: SNUR Equivalency Determination. A request for a determination of equivalency must contain:

* * * * *

PART 723—[AMENDED]

■ 13. The authority citation for part 723 continues to read as follows:

Authority: 15 U.S.C. 2604.

■ 14. Section 723.50 is amended by revising paragraph (e)(1) to read as follows:

§ 723.50 Chemical substances manufactured in quantities of 10,000 kilograms or less per year, and chemical substances with low environmental releases and human exposures.

* * * * *

(e) * * *

(1) A manufacturer applying for an exemption under either paragraph (c)(1) or (c)(2) of this section must submit an exemption notice to the EPA at least 30 days before manufacture of the new chemical substance begins. Unless allowed as described by § 723.50(e)(1)(i), (e)(1)(ii), or (e)(1)(iii), exemption notices and modifications must be submitted to EPA on EPA Form No. 7710–25 via EPA's Central Data Exchange (CDX) using EPA-provided e-PMN reporting software in the manner set forth in this paragraph. Support documents related to these notices must also be submitted to EPA via CDX using e-PMN software in the manner set forth in this paragraph. See 40 CFR 720.40(a)(2)(iv) for information on how to obtain e-PMN software.

(i) *Paper-based submissions*—(A) Such notices, and any support documents related to these notices, submitted before April 6, 2010 must be submitted on paper either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(B) All other notices and related support documents may be submitted on paper on or before April 6, 2011. All paper-based notices must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print EPA Form 7710–25 for submission to EPA. Paper notices must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency,

OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(ii) *Submissions on optical disc*—(A) Notices may be submitted as electronic files on optical disc on or before April 6, 2012. Notices submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic notices must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(B) Persons submitting on optical disc must still complete and submit on paper the Certification and Submitter Identification sections of EPA Form 7710–25 accompanying the optical disc.

(iii) *Submissions via CDX*—(A) On or after April 6, 2010, notices, and any related support documents, may be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, notices must be generated and completed on EPA Form 7710–25 using e-PMN reporting software.

(B) On or after April 6, 2012, all notices must be generated and completed on EPA Form 7710–25 using e-PMN reporting software and submitted electronically, along with any support documents related to these notices, to EPA via CDX.

(iv) Support documents for notices that are submitted before April 6, 2010 must be submitted on paper either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

* * * * *

PART 725—[AMENDED]

■ 15. The authority citation for part 725 continues to read as follows:

Authority: 15 U.S.C 2604, 2607, 2613, and 2625.

■ 16. Section 725.25 is amended by revising paragraphs (c), (e)(1), and (e)(2) to read as follows:

§ 725.25 General administrative requirements.

* * * * *

(c) *Where to submit information under this part.* MCANs and exemption requests, and any support documents related to these submissions, may only be submitted in a manner set forth in this paragraph.

(1) *Paper-based submissions.* MCANs and exemption requests, and any support documents related to these submissions, may be submitted on paper on or before April 6, 2011. All paper-based submissions must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the biotechnology notice submission to be sent to EPA. Paper notices must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(2) *Submissions on optical disc*—(i) MCANs and exemption requests may be submitted as electronic files on optical disc on or before April 6, 2012. MCANs and exemption requests submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic notices must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(ii) Persons submitting on optical disc must still prepare, sign, and submit on paper, the Certification statement in 40 CFR 725.25(b) along with submitter identification and contact information.

(iii) Support documents for MCANs or exemption requests that are submitted before April 6, 2010 must be submitted on paper either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(3) *Submissions via CDX.* MCANs and exemption requests, and any related support documents, may be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, notices must be generated and completed on EPA Form 6300-07 using e-PMN reporting software.

* * * * *

(e) * * *

(1) A manufacturer or importer may designate an agent to assist in submitting the MCAN. If so, only the manufacturer or importer, and not the agent, signs the certification on the form.

(2) A manufacturer or importer may authorize another person, (e.g., a supplier or a toll manufacturer) to report some of the information required in the MCAN to EPA on its behalf. The manufacturer or importer should indicate in a cover letter accompanying the MCAN which information will be supplied by another person and identify that other person as a joint submitter where indicated in their MCAN. The other person supplying information (i.e., the joint submitter) may submit the information to EPA either in the MCAN or a Letter of Support, except that if the joint submitter is not incorporated, licensed, or doing business in the United States, the joint submitter must submit the information to EPA in a Letter of Support only, rather than the MCAN. The joint submitter must indicate in the MCAN or Letter of Support the identity of the manufacturer or importer. Any person who submits the MCAN or Letter of Support for a joint submission must sign and certify the MCAN or Letter of Support.

* * * * *

■ 17. Section 725.29 is amended by revising paragraph (a) to read as follows:

§ 725.29 EPA acknowledgement of receipt of submission.

(a) EPA will acknowledge receipt of each submission by sending a letter via CDX or U.S. mail to the submitter that identifies the number assigned to each MCAN or exemption request and the date on which the review period begins. The review period will begin on the date the MCAN or exemption request is received by the Office of Pollution Prevention and Toxics Document Control Officer.

* * * * *

■ 18. Section 725.33 is amended by adding paragraphs (a)(10) and (a)(11) to read as follows:

§ 725.33 Incomplete submissions.

(a) * * *

(10) The submitter does not include an identifying number and a payment identity number as required by § 700.45(e)(3) of this chapter.

(11) The submitter does not submit the notice in the manner set forth in § 725.25(c).

* * * * *

■ 19. Section 725.36 is amended by revising paragraph (a) to read as follows:

§ 725.36 New information.

(a) During the review period, if a submitter possesses, controls, or knows of new information that materially adds to, changes, or otherwise makes significantly more complete the information included in the MCAN or exemption request, the submitter must send that information within 10 days of receiving the new information, but no later than 5 days before the end of the review period. The new information must be sent in the same manner the original notice or exemption was sent, as described in § 725.25(c)(1), (c)(2), and (c)(3).

* * * * *

■ 20. Section 725.54 is amended by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

§ 725.54 Suspension of the review period.

* * * * *

(b) A request for suspension may only be submitted in a manner set forth in this paragraph. The request for suspension also may be made orally, including by telephone, to the submitter's EPA contact for that notice, subject to paragraph (c) of this section.

(1) *Older notices.* Requests for suspension for notices submitted before April 6, 2010 must be submitted on paper either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(2) *Newer notices.* For notices submitted on or after April 6, 2010, EPA will accept requests for suspension only if submitted in accordance with this paragraph:

(i) Requests for suspension may be submitted on paper on or before April 6, 2011. All paper-based requests for suspension must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the request for suspension for submission to EPA. Paper requests for suspension must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(ii) Requests for suspension may be submitted as electronic files on optical disc on or before April 6, 2012. All requests for suspension submitted as electronic files on optical disc generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the request for suspension for submission to EPA. Paper requests for suspension must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(iii) Requests for suspension may be submitted electronically to EPA via CDX. Such requests must be generated and completed using e-PMN reporting software. See 40 CFR 720.40(a)(2)(iv) for information on how to obtain e-PMN software.

(c) An oral request for suspension may be granted by EPA for a maximum of 15 days only. Requests for longer suspension must only be submitted in the manner set forth in this paragraph.

(d) If the submitter has not made a previous oral request, the running of the notice review period is suspended as of the date of receipt of the written paper request, electronic request on optical disc, or CDX submission by EPA.

■ 21. Section 725.60 is amended by revising paragraph (a) to read as follows:

§ 725.60 Withdrawal of submission by the submitter.

(a) A submitter may withdraw a notice during the notice review period by submitting a statement of withdrawal in a manner set forth in this paragraph. The withdrawal is effective upon receipt of the written paper request, electronic request on optical disc, or CDX submission by EPA.

(1) *Older notices.* Statements of withdrawal for notices submitted before April 6, 2010 must be submitted on paper either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(2) *Newer notices.* For notices submitted on or after April 6, 2010, EPA will accept statements of withdrawal only if submitted in accordance with this paragraph:

(i) Statements of withdrawal may be submitted on paper on or before April 6, 2011. All paper-based statements of withdrawal must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the statement of withdrawal for submission to EPA. Paper statements of withdrawal must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(ii) Statements of withdrawal be submitted as electronic files on optical disc on or before April 6, 2012. All statements of withdrawal submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic statements of withdrawal must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(iii) Statements of withdrawal may be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such statements of withdrawal must be generated and completed using e-PMN reporting software. See 40 CFR 720.40(a)(2)(iv) for information on how to obtain e-PMN software.

* * * * *

■ 22. Section 725.67 is amended by revising paragraph (a)(1) to read as follows:

§ 725.67 Applications to exempt new microorganisms from this part.

(a) * * *

(1) Any manufacturer or importer of a new microorganism may request, under TSCA section 5(h)(4), an exemption, in whole or in part, from this part by

sending a Letter of Application in the manner set forth in § 725.25(c).

* * * * *

■ 23. Section 725.190 is amended by revising paragraph (d) to read as follows:

§ 725.190 Notice of commencement of manufacture or import.

* * * * *

(d) *Where to submit.* All notices of commencement must be submitted to EPA in a manner set forth in this paragraph.

(1) *Older notices.* Notices of commencement for a MCAN submitted before April 6, 2010 must be submitted on paper either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(2) *Newer notices.* For MCANs submitted on or after April 6, 2010, EPA will accept notices of commencement only if submitted in accordance with this paragraph:

(i) Notices of commencement may be submitted on paper on or before April 6, 2011. All paper-based notices of commencement must be generated using e-PMN reporting software and be completed through the finalization step of the software, and e-PMN software must be used to print the statement of withdrawal for submission to EPA. Paper notices of commencement must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(ii) Notices of commencement may be submitted as electronic files on optical disc on or before April 6, 2012. All notices of commencement submitted as electronic files on optical disc must be generated using e-PMN reporting software and be completed through the finalization step of the software. Optical discs containing electronic notices of commencement must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004.

(iii) Notices of commencement may be submitted electronically to EPA via CDX on or after April 6, 2010. After April 6, 2012 all notices of commencement must be submitted electronically to EPA via CDX. Prior to submission to EPA via CDX, such notices of commencement must be generated and completed using e-PMN reporting software. See 40 CFR 720.40(a)(2)(iv) for information on how to obtain e-PMN software.

■ 24. Section 725.975 is amended by revising paragraph (b) introductory text to read as follows:

§ 725.975 EPA approval of alternative control measures.

* * * * *

(b) Persons submitting a request for a determination of equivalency to EPA under this part, unless allowed by § 725.25(c) (1), (2), or (3), must submit the request to EPA via EPA's Central Data Exchange (CDX) using EPA-provided e-PMN software in the manner set forth in § 725.25(c). See 40 CFR 720.40(a)(2)(iv) for information on how to obtain e-PMN software. Support documents related to these requests must also be submitted to EPA via CDX using e-PMN software. If submitted on paper, requests must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; ATTN: SNUR Equivalency Determination or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004; ATTN: SNUR Equivalency Determination. Optical discs containing electronic requests must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004; ATTN: SNUR Equivalency Determination. A request for a determination of equivalency must contain:

* * * * *

■ 25. Section 725.984 is amended by revising paragraph (b)(1) to read as follows:

§ 725.984 Modification or revocation of certain notification requirements.

* * * * *

(b) * * *

(1) Any affected person may request modification or revocation of significant new use notification requirements for a microorganism that has been added to subpart M of this part using the procedures described in § 725.980 by writing to the Director, or a designee, and stating the basis for such request. The request must be accompanied by information sufficient to support the request. Persons submitting a request to EPA under this part, unless allowed by § 725.25(c)(1), (c)(2), or (c)(3), must submit the request to EPA via EPA's Central Data Exchange (CDX) using EPA-provided e-PMN reporting software in the manner set forth in § 725.25(c). See 40 CFR 720.40(a)(2)(iv) for information on how to obtain the e-PMN software. Support documents related to these requests must also be submitted to EPA via CDX using e-PMN software. Paper requests must be submitted either via U.S. mail to the Document Control Office (DCO) (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; ATTN: Request to Amend SNUR or submitted via courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004; ATTN: Request to Amend SNUR. Optical discs containing electronic requests must be submitted by courier to the Environmental Protection Agency, OPPT Document Control Office (DCO), EPA East Bldg., 1201 Constitution Ave., NW., Rm. 6428, Washington, DC 20004; ATTN: Request to Amend SNUR.

* * * * *

[FR Doc. E9–31004 Filed 1–5–10; 8:45 am]

BILLING CODE 6560–50–S

GENERAL SERVICES ADMINISTRATION

41 CFR Part 301–10

[FTR Amendment 2010–01; FTR Case 2010–301; Docket Number 2009–0020, Sequence 1]

RIN 3090–AJ01

Federal Travel Regulation; Privately Owned Vehicle Mileage Reimbursement

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: GSA is amending the Federal Travel Regulation (FTR) to update the mileage reimbursement rates for using a privately owned automobile (POA), motorcycle or airplane for official travel. The new rates reflect the current vehicle operating costs as determined by

investigations conducted by GSA. This governing regulation sets the mileage reimbursement allowance for official travel for a POA at $0.50, motorcycles at $0.47, and airplanes at $1.29.

DATES: *Effective Date:* This final rule is effective January 6, 2010.

Applicability Date: This final rule is applicable for official travel performed on and after January 1, 2010.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat (MVPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Cy Greenidge, Program Analyst, Office of Governmentwide Policy, at (202) 219–2349. Please cite FTR Amendment 2010–01; FTR case 2010–301.

SUPPLEMENTARY INFORMATION:

A. Background

Pursuant to 5 U.S.C. 5707(b), the Administrator of General Services has the responsibility to establish the privately owned vehicle (POV) mileage reimbursement rates that Federal employees are entitled to when they use a POA, motorcycle or airplane for official business. To set the rates, GSA is required to periodically investigate the cost to Government employees of operating a POV while on official travel, and consult with the Secretaries of Defense and Transportation, and representatives of Government employee organizations. GSA investigated the mileage rate costs for motorcycles and airplanes. The Internal Revenue Service (IRS) conducted an investigative report on the mileage rates for a POA to compute the deductible cost of operating passenger vehicles for business purposes. GSA analyzed the data in the IRS report and adopted the findings. After consultation with the above-referenced Federal agencies and Government employee organizations, the Acting Administrator of General Services has determined the per mile operating costs for official use of a POA (including trucks) is $0.50, $0.47 for motorcycles, and $1.29 for airplanes. As provided in 5 U.S.C. 5704(a)(1), the POA mileage reimbursement rate cannot exceed the single standard mileage rate established by the IRS. The IRS announced a new single standard mileage rate for automobiles of $0.50 per mile effective January 1, 2010. The results of the investigative reports have been reported to Congress.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment, and therefore, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–10

Government employees, Travel and transportation expenses.

Dated: December 28, 2009.

Stephen R. Leeds,

Acting Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR Part 301–10 as set forth below:

PART 301–10—TRANSPORTATION EXPENSES

■ 1. The authority citation for 41 CFR part 301–10 continues to read as follows:

Authority: 5 U.S.C. 5707, 40 U.S.C. 121 (c); 49 U.S.C. 40118, Office of Management and Budget Circular No. A–126, ''Improving the Management and Use of Government Aircraft.'' Revised April 28, 2006.

■ 2. Amend the table in § 301–10.303 by revising the second, third, and fourth entries to read as follows:

§ 301–10.303 What am I reimbursed when use of a POV is determined by my agency to be advantageous to the Government?

For use of a	Your reimbursement is
* * * * *	
Privately owned airplane	[1] $1.29
Privately owned automobile	[1] $0.50
Privately owned motorcycle	[1] $0.47

[1] Per mile.

Note: The following attachment will not appear in the Code of Federal Regulations.

Attachment to Preamble

General Services Administration

Reporting to Congress—The Costs of Operating Privately Owned Vehicles

Paragraph (b) of Section 5707 of Title 5, United States Code, requires the Administrator of General Services to periodically investigate the cost to Government employees of operating privately owned vehicles (airplanes, automobiles, and motorcycles) while on official travel, to report the results of the investigations to Congress, and to publish the report in the **Federal Register**. This report on the privately owned vehicle reimbursement rates is being published in the **Federal Register**.

Dated: December 28, 2009.

Stephen R. Leeds,

Acting Administrator of General Services.

Reporting to Congress—The Costs of Operating Privately Owned Vehicles

5 U.S.C. 5707(b)(1)(A) requires that the Administrator of General Services, in consultation with the Secretary of Defense, the Secretary of Transportation, and representatives of Government employee organizations, conduct periodic investigations of the cost of travel and operation of privately owned vehicles (airplanes, automobiles, and motorcycles) to Government employees while on official travel, and report the results to the Congress at least once a year. 5 U.S.C. 5707(a)(1) requires that the Administrator of General Services issue regulations prescribing mileage reimbursement rates. Pursuant to 5 U.S.C. 5707(b), the Administrator shall also determine the average, actual cost per mile for the use of each type of privately owned vehicle based on the results of these cost investigations. Such figures must be reported to the Congress within 5 working days after the cost determination has been made in accordance with 5 U.S.C. 5707(b)(2)(C).

GSA investigated the mileage rate costs for motorcycles and airplanes. The Internal Revenue Service (IRS) conducted an investigative report on the mileage rates for a POA to compute the deductible cost of operating passenger vehicles for business purposes. GSA analyzed the data in the IRS report and adopted the findings. As provided in 5 U.S.C. 5704(a)(1), the POA mileage reimbursement rate cannot exceed the single standard mileage rate established by the IRS. The IRS announced a new

single standard mileage rate for automobiles of $0.50 per mile effective January 1, 2010. Based on the investigative reports, and in consultation with the above-specified parties, I have determined the per mile operating costs for official use of a POA (including trucks) is $0.50, $0.47 for motorcycles, and $1.29 for airplanes. This report to Congress on the cost of operating POVs will be published in the **Federal Register.**

[FR Doc. E9–31358 Filed 1–5–10; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 0810141351–9087–02]

RIN 0648–XT42

Fisheries of the Economic Exclusive Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher Pacific cod by catcher/processors using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully use the 2009 total allowable catch (TAC) of Pacific cod specified for the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), December 31, 2009, through 2400 hrs, A.l.t., December 31, 2009. Comments must be received at the following address no later than 4:30 p.m., A.l.t., January 15, 2010.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments, identified by RIN 0648–XT42, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.
- Mail: P.O. Box 21668, Juneau, AK 99802.
- Fax: (907) 586–7557.
- Hand delivery to the Federal Building: 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record. No comments will be posted to *http://www.regulations.gov* for public viewing until after the comment period has closed. Comment will generally be posted without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific cod by catcher/processors using hook-and-line in the BSAI under § 679.20(d)(1)(iii) on November 16, 2009 (74 FR 59918, November 19, 2009).

NMFS has determined that as of December 28, 2009, approximately 500 metric tons of Pacific cod remain in the 2009 Pacific cod TAC in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2009 TAC of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher/processors using hook-and-line gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Pacific cod fishery by Pacific cod by catcher/processors using hook-and-line gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of December 28, 2009.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher/processors using hook-and-line gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until January 15, 2010.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 31, 2009.

William D. Chappell,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–31372 Filed 12–31–09; 11:15 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 75, No. 3
Wednesday, January 6, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 27 and 29

[Docket No. FAA–2009–0660; Notice No. 09–12]

RIN 2120–AJ52

Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would revise airworthiness standards for type certification requirements of normal and transport category rotorcraft. The amendment would require evaluation of fatigue and residual static strength of composite rotorcraft structures using a damage tolerance evaluation, or a fatigue evaluation, if the applicant establishes that a damage tolerance evaluation is impractical. The amendment would address advances in composite structures technology and provide internationally harmonized standards.

DATES: Send your comments on or before April 6, 2010

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0660 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket website, anyone can find and read the electronic form of all comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketsInfo.dot.gov*.

Docket: To read documents or comments received, go to *http://www.regulations.gov* and follow the online instructions for accessing the docket. Or, go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this proposed rule contact Sharon Y. Miles, Regulations and Policy Group, Rotorcraft Directorate, ASW–111, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas 76137–0111; telephone (817) 222–5122; facsimile (817) 222–5961; e-mail *sharon.y.miles@faa.gov*. For legal questions concerning this proposed rule contact Steve C. Harold, Directorate Counsel, ASW–7G1, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, Texas 76137–0007, telephone (817) 222–5099; facsimile (817) 222–5945, e-mail *steve.c.harold@faa.gov*.

SUPPLEMENTARY INFORMATION: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket handling. We also discuss how you can get a copy of related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is issued under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General Requirements,'' Section 44702, ''Issuance of Certificates,'' and Section 44704, ''Type Certificates, Production Certificates, and Airworthiness Certificates.'' Under Section 44701, the FAA is charged with prescribing regulations and minimum standards for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. Under Section 44702, the Administrator may issue various certificates including type certificates, production certificates, air agency certificates, and airworthiness certificates. Under Section 44704, the Administrator must issue type certificates for aircraft, aircraft engines, propellers, and specified appliances when the Administrator finds the product is properly designed and manufactured, performs properly, and meets the regulations and minimum standards prescribed under section 44701(a). This regulation is within the scope of these authorities because it would promote safety by updating the existing minimum prescribed standards, used during the type certification process, to address advances in composite structural fatigue substantiation technology. It would also harmonize this standard with international standards for evaluating the fatigue strength of normal and transport category rotorcraft composite primary structural elements.

Background and Statement of the Issues

The evolution of composite technology used in rotorcraft structures is advancing rapidly. These rapid changes with the increased use of composites in rotorcraft structures, issues discovered during certification of composite structures, and service experiences of composite rotorcraft structures over the last 25 years have caused us to reconsider the current regulations and guidance materials for damage tolerance and fatigue evaluation and to address the state of technology in composite structures. The current certification process is based on a broad interpretation of metallic fatigue

substantiation and the design and construction airworthiness standards. However, composite and metal structures are different. Composites are complex materials that have unique advantages in fatigue strength, weight, and tolerance to damage. The methodologies for evaluating metallic structures are not necessarily suitable for composite structures. Since composite structures differ from metallic structures, the current regulations, §§ 27.571 and 29.571, do not adequately provide the fatigue certification requirements for composite rotorcraft structures.

This may lead to inconsistent interpretations from one rotorcraft certification project to another, resulting in different burdens on industry to substantiate their composite rotorcraft structures. It has also caused confusion for some certification applicants. These applicants state there is no clear, complete guidance for certification of composite rotorcraft structures.

To address these concerns, the FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) [1] through its Composite Rotorcraft Structure working group to provide advice and recommendations as follows:

- Recommend revisions to FAR/JAR 27 and 29 for composite structures that are harmonized.
- Evaluate and recommend, as appropriate, regulations, advisory material, and related guidance to achieve the goal of improved tolerance to flaws and defects in composite structure with methodology and procedures that are practical and appropriate to rotorcraft.

This proposed rule is based on the ARAC's recommendations to the FAA. The recommendations have been placed in the docket for this rulemaking.

Related Activity

At the same time the ARAC was tasked with providing advice and recommendations for composite rotorcraft structures, it was also tasked with providing advice and recommendations for metallic rotorcraft structures. Because of the unique characteristics and structural capabilities of composite structures, we believe a separate rule is needed for the damage tolerance and fatigue evaluations of rotorcraft composite structures. In response to the ARAC recommendations for improved standards for metallic structures, the FAA is developing an NPRM entitled Fatigue Tolerance Evaluation of Metallic Structures.

General Discussion of Proposals

Composite structures present unique material behaviors and react differently than metallic to damage and loading conditions. This separate rulemaking action for the damage tolerance and fatigue evaluation of composite structures is proposed to address the type certification requirements for substantiating and certifying composite rotorcraft structures including different aspects of the evaluation for the most critical issues for each class of materials. These proposals address the unique characteristics of composite materials and would enable applicants to evaluate these types of materials in a different manner from those of the traditional metallic materials.

The proposed changes would clarify the certification standards in areas of frequent non-standardization and misinterpretation. These proposals are intended to address fatigue damage tolerance conditions that can reduce structural strength. In composites, low cycle fatigue often yields minimal damage growth, whereas accidental damage from impact can immediately reduce residual structural strength. Conversely, in metals, any critical damage to the structure would be sensitive to cyclic fatigue loads.

These proposals also address material and process variability and environmental effects. The FAA proposes a strength requirement for ultimate loads that would be applied when maximum acceptable manufacturing defects and service damage are present. These proposals would provide an exception to a damage tolerance evaluation if the applicant establishes impracticability and, in that instance, would allow a fatigue evaluation for some rotorcraft structures and damage scenarios based on retirement times instead of inspection intervals more commonly associated with damage tolerance standards. Under this proposal, an applicant could demonstrate that certain damage would not grow or does not grow beyond a certain threshold or size, and that the damaged structure could still carry ultimate loads. In this instance, an inspection may not be necessary and the structure could be assigned a retirement life instead of a required inspection program. Further, this proposal would require an applicant to conduct a threat assessment, which is associated with the service history of composite structures.

The proposals consider varying types of damage, loading conditions, threat assessments, manufacturing defects, and residual strength associated with composite structures. In developing these proposals, we have recognized that it may be impractical within the limits of geometry, inspectability, or good design practice to evaluate all the composite structures of a rotorcraft using a damage tolerance evaluation. Therefore, this proposal allows for a fatigue evaluation of particular rotorcraft composite structures under §§ 27.573(e) and 29.573(e) where appropriate, instead of requiring a damage tolerance evaluation for particular structures if the applicant can establish that an impracticability exists. As part of the approval process for fatigue evaluation of a particular rotorcraft composite structure, the applicant would be required to identify the Principal Structural Elements (PSEs) and the types of damage considered, establish supplemental procedures to minimize the risk of catastrophic failure associated with those types of damage, and include procedures in the Airworthiness Limitation section of the Instructions for Continued Airworthiness. The proposed requirements would minimize the risk of catastrophic failure of composite structures used on rotorcraft certificated in accordance with part 27 and part 29 standards.

Key Provisions in the New Rule

Some of the proposed requirements for evaluating composite structures came from the current § 29.571 standards. These requirements in the evaluation process include certain steps, such as identification of the PSEs, the in-flight measurements of loads, and the use of loading spectra as severe as those expected in-service. This proposal adds more detailed steps and does not refer to the current flaw tolerant safe-life and fail-safe evaluations because there are more suitable ways of describing each approach under damage tolerance. Further, these proposals do not refer to the traditional safe-life method because composites have sensitivities to defects and damage that must be considered in design and certification testing that make the traditional safe-life method inappropriate.

These proposals would revise the standards for determining inspection intervals and retirement times based on results of damage tolerance and fatigue evaluation. Currently, the minimum residual structural strength requirement for any damage or defect that can be found by inspection is tied to limit loads (maximum loads to be expected in service). This proposal would link the required residual structural strength to

[1] Published in the **Federal Register**, April 5, 2000 (65 FR 17936).

the probability of a given damage type, inspection interval, and damage detectability. This link is necessary for at least two reasons. First, one of the more critical threats—impact damage—could immediately lower residual structural strength well below ultimate loads (limit loads multiplied by prescribed factors of safety) if it occurs. The proposal would ensure, as the residual structural strength is lowered, the earlier damage would be detected and repaired. Inspections would be required that would be frequent and comprehensive enough to reveal any damage or defect growth to minimize the time that the rotorcraft might be operated at less than an ultimate load capability. Second, this proposal would address rare damage (such as a high-energy, blunt impact) that is not detectable with the currently prescribed inspection schemes issued for aircraft in operational service. Although such damage may have a low probability of occurring, this proposal would require that sufficient residual structural strength exists to compensate for such damage.

These proposals would require that all PSEs, the failure of which could result in catastrophic failure of the rotorcraft, meet ultimate load residual structural strength requirements or require that a retirement time be established if there could be any damage that may not be found by a maintenance inspection. Under this proposal, an applicant would establish a retirement time to assess the damage that may not be found by inspection or to eliminate the burden of the repeated inspections by the rotorcraft owners. For damage detectable by inspection, the proposal would establish a limit load requirement to repair and restore the structure to its ultimate strength capability.

The FAA proposes to include all PSE assessments for damage threats, residual strength and fatigue characteristics to the list of requirements for inspection intervals or replacement times as stated in proposed §§ 27.573(d)(1) and 29.573(d)(1). As a minimum, the fatigue evaluation would include the PSEs of the:

—Airframe,
—Main and tail rotor drive systems,
—Main and tail rotor blades and hubs,
—Rotor controls,
—Fixed and movable control surfaces,
—Engine and transmission mountings (provided by the airframe manufacturer), and
—Landing gear and other parts; as well as performing damage tolerance evaluations of the strength of composite:
—Detail design points and
—Fabrication techniques considered critical by the FAA to avoid catastrophic failure due to static or fatigue loads.

The proposal would require consideration of the effects of fatigue damage on stiffness, dynamic behavior, loads, and functional performance of composite structures. In the existing rule, such requirements are limited to fail-safe evaluations. These characteristics are not considered to be a serious threat to residual structural strength.

The FAA recognizes there may be limited cases in which a damage tolerance evaluation may be impractical. In these rare cases, the applicant would be required to identify the nature of the evaluation and provide a justification to the FAA for the determination of its impracticality. The justification would support the specific types of damage to the PSE that would qualify for a fatigue evaluation. Finally, the proposal would require the applicant to establish replacement times, structural inspection intervals, and related structural inspection procedures to minimize the risk of catastrophic failure because of such damage. The required replacement times, inspection intervals, and structural inspections would be included in the Instructions for Continued Airworthiness as required by §§ 27.1529 and 29.1529.

Additionally, the FAA recognizes that rare types of damage, such as high-energy, blunt impacts may not be uncovered as part of a base field inspection during scheduled maintenance inspection intervals. This proposal would require that the applicant substantiate sufficient residual structural strength to maintain an adequate level of safety in the event of an occurrence of rare damage. Supplemental procedures may be required to adequately address rare impact damage.

Airworthiness Limitations Section (Appendix A to Parts 27 and 29)

This proposal would require the mandatory replacement times, structural inspection intervals, and related structural inspection procedures produced under the requirements of §§ 27.571 and 29.571, the new §§ 27.573 and 29.573, and any other similar requirement for type certification be included in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by 44 U.S.C. 3507(d) of the Paperwork Reduction Act of 1995, as implemented by 5 CFR part 1320, the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget (OMB) for review.

Title: Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structures.

Summary: This proposal would add new certification standards for normal and transport category rotorcraft to address advances in structural damage tolerance and fatigue substantiation technology for composite rotorcraft structures. These proposals would increase the current minimum safety standards to require compliance with certain current industry practices and FAA policies that would result in higher safety standards, and would result in harmonized international standards. These proposals would help ensure that if damage occurs to composite structures during manufacturing or within the operational life of the rotorcraft, the remaining structure could withstand fatigue loads that are likely to occur, without failure, until the damage is detected. The damaged structure must then be repaired to restore ultimate load capability, or the part must be replaced. Proposed §§ 27.573 and 29.573 would require that applicants get FAA approval of their proposed methods for complying with the certification requirements for damage tolerance and fatigue evaluation of composite structures.

Use of information: The required damage tolerance and fatigue evaluation information would be determined for principal composite structural elements or components, detail design points, and fabrication techniques and would be collected from rotorcraft certification applicants. The FAA would use the approval process for the Applicant's submitted compliance methodology to determine whether the proposed methods were sufficient to comply with the certification requirements for damage tolerance and fatigue evaluation of composite structures. The FAA also would use the approval process for the Applicant's submitted compliance methodology to determine if the rotorcraft has any unsafe features in the composite structures.

Respondents: The likely respondents to this proposed damage tolerance and fatigue evaluation information are applicants requesting type certification of composite structures. We anticipate about 10 normal and transport category rotorcraft certification applicants (including supplemental type certificate

applicants) over the 27-year analysis period or about 0.4 per year.

Frequency: The frequency of determining the damage tolerance and fatigue evaluation methodologies would depend on how often an applicant seeks certification of a composite structure. This compliance methodology would be provided during each certification. We anticipate 16.5 certifications over the 27 year analysis period or about 0.6 per year.

Annual Burden Estimate: The compliance methodology would be required to be submitted and approved during each certification of a composite rotorcraft structure. We anticipate there would be 0.6 certifications each year and it would take 182 hours to submit and approve the compliance methodology for each certification, for a total annual time burden of 109 hours. We anticipate that submitting and approving the compliance methodology for each certification would cost $100.00 per hour. Therefore, the estimated total annual cost burden would be $10,900.00.

The agency is asking for comments to—

(1) evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden;

(3) improve the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of collecting information on those who are to respond, by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by March 8, 2010, and should direct them to the address listed in the **ADDRESSES** section. Comments also should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for FAA, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053.

According to the 1995 amendments to the Paperwork Reduction Act and 5 CFR 1320.8(b)(3)(vi), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register,** after the Office of Management and Budget approval.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA's policy to comply with International Civil Aviation Organization (ICAO) Standards to the maximum extent practicable. The FAA has determined that the proposed rule is consistent with the ICAO standard in ICAO Annex 8, Part IV.

European Aviation Safety Agency

The European Aviation Safety Agency (EASA) was established by the European Community to develop standards to ensure safety and environmental protection, oversee uniform application of those standards, and promote them internationally. EASA formally became responsible for certification of aircraft, engines, parts, and appliances on September 28, 2003. The FAA and EASA are coordinating their rulemaking efforts to facilitate harmonized standards for evaluating the fatigue strength of composite rotorcraft structures.

Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Public Law 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this proposed rule:

(1) Has benefits that justify its costs;

(2) Is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866;

(3) Has been determined by the Office of Management and Budget to be a ''non-significant regulatory action;''

(4) Is not ''significant'' as defined in DOT's Regulatory Policies and Procedures;

(5) Would not have a significant economic impact on a substantial number of small entities;

(6) Would not have a significant effect on international trade; and

(7) Would not impose an unfunded mandate on State, local, or tribal governments by exceeding the monetary threshold identified.

These analyses are summarized below.

Total Benefits and Costs of This Rulemaking

The estimated total cost of this proposed rule is about $713,000 ($392,000 in present value, discounted at 7% for 27 years).

Who is Potentially Affected by this Rulemaking?

- Manufacturers of U.S.-registered part 27 and part 29 rotorcraft, and
- Operators of part 27 and part 29 rotorcraft.

Our Cost Assumptions and Sources of Information.

- Discount rate—7%
- Period of analysis of 27 years equals the 27 years of National Transportation Safety Board accident history. During this period, manufacturers will seek new certifications for 10.5 part 27 rotorcraft and six part 29 rotorcraft.

This proposed rule consolidates FAA and industry past activities including special conditions, advisory circulars, and industry practice regarding the use of composites on rotorcraft. The benefits of this action exceed the small costs of this proposed rule.

We estimate the costs of this proposed rule to be about $713,000 ($392,000 in present value) over the 27-year analysis period. Manufacturers of 14 CFR part 27 rotorcraft would incur costs of $101,000 ($55,000 in present value) and manufacturers of 14 CFR part 29 helicopters would incur costs of $612,000 ($337,000 in present value).

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of

regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To observe that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

If an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 RFA provides that the head of the agency may so certify, and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule would affect rotorcraft manufacturers and rotorcraft operators. Therefore, the effect on potential small entities is analyzed separately for helicopter manufacturers and operators.

Part 27 Helicopter Manufacturers

Size Standards

Size standards for small entities are published by the Small Business Administration (SBA) on their Web site at *http://www.sba.gov/size*. The size standards used herein are from ''SBA U.S. Small Business Administration, Table of Small Business Size Standards, Matched to North American Industry Classification System Codes.'' The table is effective August 22, 2008 and uses the 2007 NAICS codes.

Helicopter manufacturers are listed in the above-referenced table under Sector 31–33—Manufacturing; Subsector 336—Transportation Equipment Manufacturing; NAICS Code 336411—Aircraft Manufacturing. The small entity size standard is 1,500 employees.

Table R1 shows there are six U.S. part 27 helicopter manufacturers that produce composite helicopters. MD Helicopters, with 400 employees, is the only part 27 helicopter manufacturer to qualify as a small entity. It is estimated that MD Helicopters has annual revenues of $175,000,000. The cost of this rule for one part 27 helicopter certification for a part 27 manufacturer is estimated to be $9,600 over 27 years, and the total number of such certifications is estimated at 10.5, if only one of these were performed by MD Helicopters, the cost would be equivalent to 0.005 percent of their total revenue, which would not represent a significant cost. Therefore, it is not anticipated that this proposed rule would have a significant economic impact on a substantial number of part 27 helicopter manufacturers.

TABLE R1—U.S. PART 27 HELICOPTER MANUFACTURERS

Manufacturer					Annual		
Number	Name	Ultimate owner	Employees	Small entity	Revenues (AR)	Proposal costs (PC)	% PC of AR
1	Agusta (A)	Finmeccanica	73,000	No	€15,037,000	N.A.	N.A.
2	Bell Helicopter (B)	Textron	42,000	No	$14,200,000,000	N.A.	N.A.
3	Eurocopter (C)	EADS	118,000	No	€43,3000,000,000	N.A.	N.A.
4	Kaman Aerospace (D)	Kaman Corp	4,000	No	$1,200,000,000	N.A.	N.A.
5	MD Helicopters (E)(F)	None	400	Yes	$175,000,000	$9,600	0.01%
6	Sikorsky (G)	UTC	223,100	No	$58,700,000,000	N.A.	N.A.
7	Robinson Helicopters (H).						

Notes:

(A) http://www.finmeccanica.com
(B) http://www.Textron.com/about/company
(C) http://www.eads.com
(D) http://www.kaman.com
(E) http://www.linkdin.com
(F) http://www.jigsaw.com/id55718/md—helicopters—company.xhtml (Average of range of $100–$250 million) Cost is based on one helicopter certifcation during the analysis period.
(G) http://www.utc.com/about—utc/fast—facts.lhtml
(H) Robinson Helicopters is not included because it produces only metallic helicopters and is not expected to produce composite heliopters in the future.

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Part 29 Helicopter Manufacturers

Size Standards

Size standards for part 29 manufacturers are the same as the size standards for part 27 manufacturers.

Table R2 shows there are four U.S. part 29 helicopter manufacturers currently producing helicopters. None of these manufacturers qualifies as a small entity. Therefore, it is not anticipated that this proposed rule would have a significant economic impact on a substantial number of part 29 helicopter manufacturers.

TABLE R1—U.S. PART 29 HELICOPTER MANUFACTURERS

Manufacturer					Annual		
Number	Name	Ultimate owner	Employees	Small entity	Revenues (AR)	Proposal costs (PC)	% PC of AR
1	Agusta (A)	Finmeccanica	73,000	No	€15,037,000	N.A.	N.A.
2	Bell Helicopter (B)	Textron	42,000	No	$14,200,000,000	N.A.	N.A.
3	Eurocopter (C)	EADS	118,000	No	€43,3000,000,000	N.A.	N.A.
4	Sikorsky (F)	UTC	223,100	No	$58,700,000,000	N.A.	N.A.

Notes:

(A) http://www.finmeccanica.com
(B) http://www.Textron.com/about/company
(C) http://www.eads.com
(F) http://www.utc.com/about—utc/fast—facts.lhtml

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Part 27 and Part 29 Helicopter Operators

Size Standards

While there are only seven part 27 and four part 29 helicopter manufacturers in the United States, there are many small entities that are operators of part 27 and part 29 helicopters. Each of these operators may provide many services or only one. Such services include offshore transportation, executive transportation, fire-fighting, Emergency Medical Services (EMS), and training in maintenance, repair, and modification.

The SBA lists small entity size standards for air transportation under Sector 44–45, Retail Trade, Subsector 481, Air Transportation. The small entity size standards are 1,500 employees for scheduled and nonscheduled charter passenger and freight transportation. This standard is $28.0 million annually if the passenger or freight air transportation is offshore marine air transportation. Finally, the small entity size standard for other—non-scheduled air transportation is $7.0 million annually.

This proposed rule is not expected to increase the costs of part 27 or part 29 helicopter operators, because we believe the helicopter inspection time for a composite part will be the same as or less than for a metallic part inspection. We request comments regarding this assumption.

Consequently, the FAA certifies that this proposed rule would not have a significant economic impact on a substantial number of part 27 or part 29 rotorcraft manufacturers or operators.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, establishing standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any 1 year by state, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted threshold value of $141.3 million. This proposed rule does not contain such a mandate.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore, would not have federalism implications.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in Title 14 of the CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish appropriate regulatory distinctions. Because this proposed rule would apply to the certification of future designs of rotorcraft and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently in intrastate operations in Alaska.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this NPRM under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply,

Distribution, or Use (May 18, 2001). We have determined that it is not a ''significant regulatory action'' under the executive order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited:

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visiting the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/;* or

3. Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the internet through the Federal eRulemaking Portal referenced in paragraph 1.

List of Subjects

14 CFR Part 27

Aircraft, Aviation safety.

14 CFR Part 29

Aircraft, Aviation safety.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 27 and 29 of Title 14, Code of Federal Regulations, as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

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

2. Add a new § 27.573 to read as follows:

§ 27.573 Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structures.

(a) Each applicant must evaluate the composite rotorcraft structure under the damage tolerance standards of paragraph (d) of this section unless the applicant establishes that a damage tolerance evaluation is impractical within the limits of geometry, inspectability, and good design practice. If an applicant establishes that it is impractical within the limits of geometry, inspectability, and good design practice, the applicant must do a fatigue evaluation in accordance with paragraph (e) of this section.

(b) The compliance methodology of each applicant, and the results of that methodology, requires FAA approval.

(c) Definitions:

(1) *Catastrophic failure* is an event that could prevent continued safe flight and landing.

(2) *Principal Structural Elements (PSEs)* are structural elements that contribute significantly to the carrying of flight or ground loads, the failure of which could result in catastrophic failure of the rotorcraft.

(3) *Threat Assessment* is an assessment that specifies the locations, types, and sizes of damage, considering fatigue, environmental effects, intrinsic and discrete flaws, and impact or other accidental damage (including the discrete source of the accidental damage) that may occur during manufacture or operation.

(d) Damage Tolerance Evaluation:

(1) Each applicant must show that catastrophic failure due to static and fatigue loads, considering the intrinsic or discrete manufacturing defects or accidental damage, is avoided throughout the operational life or prescribed inspection intervals of the rotorcraft by performing damage tolerance evaluations of the strength of composite PSEs and other parts, detail design points, and fabrication techniques. Each applicant must account for the effects of material and process variability along with environmental conditions in the strength and fatigue evaluations. Each applicant must evaluate parts that include PSEs of the airframe, main and tail rotor drive systems, main and tail rotor blades and hubs, rotor controls, fixed and movable control surfaces, engine and transmission mountings, landing gear and other parts, detail design points, and fabrication techniques deemed critical by the FAA. Each damage tolerance evaluation must include:

(i) The identification of all PSEs;

(ii) In-flight and ground measurements for determining the loads or stresses for all PSEs for all critical conditions throughout the range of limits in § 27.309 (including altitude effects), except that maneuvering load factors need not exceed the maximum values expected in service;

(iii) The loading spectra as severe as those expected in service based on loads or stresses determined under paragraph (d)(1)(ii) of this section, including external load operations, if applicable, and other operations including high-torque events;

(iv) A threat assessment for all PSEs that specifies the locations, types, and sizes of damage, considering fatigue, environmental effects, intrinsic and discrete flaws, and impact or other accidental damage (including the discrete source of the accidental damage) that may occur during manufacture or operation; and

(v) An assessment of the residual strength and fatigue characteristics of all PSEs that supports the replacement times and inspection intervals established under paragraph (d)(2) of this section.

(2) Each applicant must establish replacement times, inspections, or other procedures for all PSEs to require the repair or replacement of damaged parts before a catastrophic failure. These replacement times, inspections, or other procedures must be included in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness required by § 27.1529.

(i) Replacement times for PSEs must be determined by tests, or by analysis supported by tests, and must show that

the structure is able to withstand the repeated loads of variable magnitude expected in-service. In establishing these replacement times, the following items must be considered:

(A) Damage identified in the threat assessment required by paragraph (d)(1)(iv) of this section;

(B) Maximum acceptable manufacturing defects and in-service damage *(i.e.,* those that do not lower the residual strength below ultimate design loads and those that can be repaired to restore ultimate strength); and

(C) Ultimate load strength capability after applying repeated loads.

(ii) Inspection intervals for PSEs must be established to reveal any damage identified in the threat assessment required by paragraph (d)(1)(iv) of this section that may occur from fatigue or other in-service causes before such damage has grown to the extent that the component cannot sustain the required residual strength capability. In establishing these inspection intervals, the following items must be considered:

(A) The growth rate, including no-growth, of the damage under the repeated loads expected in-service determined by tests or analysis supported by tests;

(B) The required residual strength for the assumed damage established after considering the damage type, inspection interval, detectability of damage, and the techniques adopted for damage detection. The minimum required residual strength is limit load; and

(C) Whether the inspection will detect the damage growth before the minimum residual strength is reached and restored to ultimate load capability, or whether the component will require replacement.

(3) Each applicant must consider the effects of damage on stiffness, dynamic behavior, loads, and functional performance on all PSEs in establishing the allowable damage size and inspection interval.

(e) Fatigue Evaluation: If an applicant establishes that the damage tolerance evaluation described in paragraph (d) of this section is impractical within the limits of geometry, inspectability, or good design practice, the applicant must do a fatigue evaluation of the particular composite rotorcraft structure and:

(1) Identify all PSEs considered in the fatigue evaluation;

(2) Identify the types of damage for all PSEs considered in the fatigue evaluation;

(3) Establish supplemental procedures to minimize the risk of catastrophic failure associated with the damages identified in paragraph (e) of this section; and

(4) Include these supplemental procedures in the Airworthiness Limitations section of the Instructions for Continued Airworthiness required by § 27.1529.

Appendix A to Part 27 [Amended]

3. Amend the second sentence of section A.27.4 of Appendix A to Part 27 by removing the phrase ''approved under § 27.571'' and adding the phrase ''required for type certification'' in its place.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

4. The authority citation for part 29 continues to read as follows:

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

5. Add a new § 29.573 to read as follows:

§ 29.573 Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structures.

(a) Each applicant must evaluate the composite rotorcraft structure under the damage tolerance standards of paragraphs (d) of this section unless the applicant establishes that a damage tolerance evaluation is impractical within the limits of geometry, inspectability, and good design practice. If an applicant establishes that it is impractical within the limits of geometry, inspectability, and good design practice, the applicant must do a fatigue evaluation in accordance with paragraph (e) of this section.

(b) The compliance methodology of each applicant, and the results of that methodology, requires approval by the FAA.

(c) Definitions:

(1) *Catastrophic failure* is an event that could prevent continued safe flight and landing.

(2) *Principal Structural Elements (PSEs)* are structural elements that contribute significantly to the carrying of flight or ground loads, the failure of which could result in catastrophic failure of the rotorcraft.

(3) *Threat Assessment* is an assessment that specifies the locations, types, and sizes of damage, considering fatigue, environmental effects, intrinsic and discrete flaws, and impact or other accidental damage (including the discrete source of the accidental damage) that may occur during manufacture or operation.

(d) Damage Tolerance Evaluation:

(1) Each applicant must show that catastrophic failure due to static and fatigue loads, considering the intrinsic or discrete manufacturing defects or accidental damage, is avoided throughout the operational life or prescribed inspection intervals of the rotorcraft by performing damage tolerance evaluations of the strength of composite PSEs and other parts, detail design points, and fabrication techniques. Each applicant must account for the effects of material and process variability along with environmental conditions in the strength and fatigue evaluations. Each applicant must evaluate parts that include PSEs of the airframe, main and tail rotor drive systems, main and tail rotor blades and hubs, rotor controls, fixed and movable control surfaces, engine and transmission mountings, landing gear and other parts, detail design points, and fabrication techniques deemed critical by the FAA. Each damage tolerance evaluation must include:

(i) The identification of all PSEs;

(ii) In-flight and ground measurements for determining the loads or stresses for all PSEs for all critical conditions throughout the range of limits in § 29.309 (including altitude effects), except that maneuvering load factors need not exceed the maximum values expected in service;

(iii) The loading spectra as severe as those expected in service based on loads or stresses determined under paragraph (d)(1)(ii) of this section, including external load operations, if applicable, and other operations including high-torque events;

(iv) A threat assessment for all PSEs that specifies the locations, types, and sizes of damage, considering fatigue, environmental effects, intrinsic and discrete flaws, and impact or other accidental damage (including the discrete source of the accidental damage) that may occur during manufacture or operation; and

(v) An assessment of the residual strength and fatigue characteristics of all PSEs that supports the replacement times and inspection intervals established under paragraph (d)(2) of this section.

(2) Each applicant must establish replacement times, inspections, or other procedures for all PSEs to require the repair or replacement of damaged parts before a catastrophic failure. These replacement times, inspections, or other procedures must be included in the Airworthiness Limitations Section of the Instructions for Continued Airworthiness required by § 29.1529.

(i) Replacement times for PSEs must be determined by tests, or by analysis supported by tests, and must show that the structure is able to withstand the repeated loads of variable magnitude expected in-service. In establishing

these replacement times, the following items must be considered:

(A) Damage identified in the threat assessment required by paragraph (d)(1)(iv) of this section;

(B) Maximum acceptable manufacturing defects and in-service damage (i.e., those that do not lower the residual strength below ultimate design loads and those that can be repaired to restore ultimate strength); and

(C) Ultimate load strength capability after applying repeated loads.

(ii) Inspection intervals for PSEs must be established to reveal any damage identified in the threat assessment required by paragraph (d)(1)(iv) of this section that may occur from fatigue or other in-service causes before such damage has grown to the extent that the component cannot sustain the required residual strength capability. In establishing these inspection intervals, the following items must be considered:

(A) The growth rate, including no-growth, of the damage under the repeated loads expected in-service determined by tests or analysis supported by tests;

(B) The required residual strength for the assumed damage established after considering the damage type, inspection interval, detectability of damage, and the techniques adopted for damage detection. The minimum required residual strength is limit load; and

(C) Whether the inspection will detect the damage growth before the minimum residual strength is reached and restored to ultimate load capability, or whether the component will require replacement.

(3) Each applicant must consider the effects of damage on stiffness, dynamic behavior, loads, and functional performance on all PSEs in establishing the allowable damage size and inspection interval.

(e) Fatigue Evaluation: If an applicant establishes that the damage tolerance evaluation described in paragraph (d) of this section is impractical within the limits of geometry, inspectability, or good design practice, the applicant must do a fatigue evaluation of the particular composite rotorcraft structure and:

(1) Identify all PSEs considered in the fatigue evaluation;

(2) Identify the types of damage for all PSEs considered in the fatigue evaluation;

(3) Establish supplemental procedures to minimize the risk of catastrophic failure associated with the damages identified in paragraph (e) of this section; and

(4) Include these supplemental procedures in the Airworthiness Limitations section of the Instructions for Continued Airworthiness required by § 29.1529.

Appendix A to Part 29 [Amended]

6. Amend the second sentence of section A.29.4 of Appendix A to Part 29 by removing the phrase ''approved under § 29.571'' and adding the phrase ''required for type certification'' in its place.

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

K.C. Yanamura,

Acting Director, Aircraft Certification Service.

[FR Doc. E9–31381 Filed 1–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0674; Directorate Identifier 2009–NE–25–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–Trent 500, 700, and 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Rolls-Royce plc RB211–Trent 800 series turbofan engines. That AD currently requires replacing the fuel-to-oil heat exchanger (FOHE). This proposed AD would require replacing the FOHE on the RB211–Trent 500 and RB211–Trent 700 series turbofan engines in addition to the RB211–Trent 800 series turbofan engines. 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, and results from the risk of engine FOHE blockage. The MCAI describes the unsafe condition as:

In January 2008, a Boeing 777 powered by RB211–Trent 800 engines crashed short of the runway as a result of dual loss of engine response during the final stages of approach. The investigation of the incident has established that, under certain ambient conditions, ice can accumulate on the walls of the fuel pipes within the aircraft fuel system, which can then be released downstream when fuel flow demand is increased. This released ice can then collect on the FOHE front face and limit fuel flow through the FOHE. This type of icing event was previously unknown and creates ice concentrations into the fuel system beyond those specified in the certification requirements.

In May 2009, an Engine Indicating and Crew Alerting System (EICAS) surge message was set following a successful go-around maneuver on a single RB211–Trent 700 engine of an A330 aircraft. Subsequent analysis concluded the likely cause to be temporary ice accumulation causing fuel flow restriction in the FOHE. The incident has indicated the potential susceptibility to ice blockage for Airbus aircraft in combination with Rolls-Royce engines that feature similar fuel systems to the RB211–Trent 800.

We are proposing this AD to prevent ice from blocking the FOHE, which could result in an unacceptable engine power loss and loss of control of the airplane.

DATES: We must receive comments on this proposed AD by February 5, 2010.

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 Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936, 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–2009–0674; Directorate Identifier 2009–NE–25–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 AD 2009–0142, dated July 13, 2009 to correct an unsafe condition on RB211–Trent 800 series turbofan engines. We issued AD 2009–24–05 (74 FR 62222, November 27, 2009) to correspond with that EASA AD. Since we issued that AD, EASA issued AD 2009–0257, dated December 3, 2009, to correct the same unsafe condition on RB211–Trent 500 and RB211–Trent 700 series turbofan engines. That EASA AD states:

> In January 2008, a Boeing 777 powered by RB211–Trent 800 engines crashed short of the runway as a result of dual loss of engine response during the final stages of approach. The investigation of the incident has established that, under certain ambient conditions, ice can accumulate on the walls of the fuel pipes within the aircraft fuel system, which can then be released downstream when fuel flow demand is increased. This released ice can then collect on the FOHE front face and limit fuel flow through the FOHE. This type of icing event was previously unknown and creates ice concentrations into the fuel system beyond those specified in the certification requirements.
>
> In May 2009, an EICAS surge message was set following a successful go-around maneuver on a single Trent 700 engine of an A330 aircraft. Subsequent analysis concluded the likely cause to be temporary ice accumulation causing fuel flow restriction in the FOHE. The incident has indicated the potential susceptibility to ice blockage for Airbus aircraft in combination with Rolls-Royce engines that feature similar fuel systems to the RB211–Trent 800.

To mitigate the risk of engine FOHE blockage, this proposed AD would require, for RB211–Trent 500, 700, and 800 series turbofan engines, replacing the existing FOHE with a FOHE incorporating the modifications specified in the applicable Rolls-Royce plc Alert Service Bulletin.

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

Relevant Service Information

Rolls-Royce plc has issued Alert Service Bulletin (ASB) No. RB.211–79–AG346, dated October 23, 2009 for RB211–Trent 500 series turbofan engines, ASB No. RB.211–79–AG338, Revision 1, dated December 2, 2009 for RB211–Trent 700 series turbofan engines, and ASB No. RB.211–79–AG257, Revision 1, dated September 14, 2009 for RB211–Trent 800 series turbofan engines. 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

These products have been approved by the aviation authority of the United Kingdom, and are approved for operation in the United States. Pursuant to our bilateral agreement with the United Kingdom, 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. This proposed AD would require replacing the existing FOHE on RB211–Trent 500 and RB211–Trent 700 series turbofan engines within 6,000 flight hours after the effective date of this AD, or before January 1, 2011, whichever occurs first, and on RB211–Trent 800 series turbofan engines, replacing the existing FOHE within 6,000 flight hours after January 4, 2010 (the effective date of FAA AD 2009–24–05), or before January 1, 2011, whichever occurs first.

Differences Between This AD and the MCAI or Service Information

The EASA AD 2009–0142, dated July 13, 2009, and EASA AD 2009–0257, dated December 3, 2009, require replacing the FOHE within 6,000 flight hours from July 10, 2009 or before January 1, 2011, whichever occurs first. This proposed AD would require replacing the FOHE on RB211–Trent 500 and RB211–Trent 700 series turbofan engines within 6,000 flight hours after the effective date of this AD, or before January 1, 2011, whichever occurs first, and on RB211–Trent 800 series turbofan engines, replacing the FOHE within 6,000 flight hours after January 4, 2010 (the effective date of AD 2009–24–05), or before January 1, 2011, whichever occurs first.

Costs of Compliance

Based on the service information, we estimate that this proposed AD will affect about 138 RB211–Trent 800 series engines, and about 10 RB211–Trent 700 series engines, installed on airplanes of U.S. registry. There are currently no RB211–Trent 500 series engines installed on airplanes of U.S. registry. We also estimate that it will take about 8.5 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $58,005 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $8,685,380.

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 removing Amendment 39–16092 (74 FR 62222, November 27, 2009) and by adding the following new AD:

Rolls-Royce plc: Docket No. FAA–2009–0674; Directorate Identifier 2009–NE–25–AD.

Comments Due Date

(a) We must receive comments by February 5, 2010.

Affected Airworthiness Directives (ADs)

(b) This AD supersedes AD 2009–24–05, Amendment 39–16092.

Applicability

(c) This AD applies to:

(1) Rolls-Royce plc models RB211–Trent 553–61, 556–61, 556B–61, 560–61, 553A2–61, 556A2–61, 556B2–61, and 560A2–61 turbofan engines with fuel-to-oil heat exchangers (FOHEs) part number (P/N) 55027001–1 or 55027001–11 installed; and

(2) Rolls-Royce plc models RB211–Trent 768–60, 772–60, 772B–60, and RB211–Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines with FOHEs P/N 55003001–1 or 55003001–11 installed.

(3) The RB211–Trent 500 series engines are installed on, but not limited to, Airbus A340–500 and –600 series airplanes. The RB211–Trent 700 series engines are installed on, but not limited to, Airbus A330–200 and –300 series airplanes. The RB211–Trent 800 series engines are installed on, but not limited to, Boeing 777 series airplanes.

Reason

(d) 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, and results from the risk of engine FOHE blockage. We are issuing this AD to prevent ice from blocking the FOHE, which could result in an unacceptable engine power loss and loss of control of the airplane.

Actions and Compliance

(e) For RB211–Trent 500 series turbofan engines and RB211–Trent 700 series turbofan engines, unless already done, within 6,000 flight hours after the effective date of this AD, or before January 1, 2011, whichever occurs first, do the following:

(1) For RB211–Trent 500 series turbofan engines, replace the FOHE P/N 55027001–1 or 55027001–11, with an FOHE that incorporates the modifications specified in Rolls-Royce plc Alert Service Bulletin (ASB) No. RB.211–79–AG346, dated October 23, 2009.

(2) For RB211–Trent 700 series turbofan engines, replace the FOHE, P/N 55003001–1 or 55003001–11, with an FOHE that incorporates the modifications specified in Rolls-Royce plc ASB No. RB.211–79–AG338, Revision 1, dated December 2, 2009.

(f) For RB211–Trent 800 series turbofan engines, unless already done, replace the FOHE, P/N 55003001–1 or 55003001–11, with an FOHE that incorporates the modifications specified in Rolls-Royce plc ASB No. RB.211–79–AG257, Revision 1, dated September 14, 2009 within 6,000 flight hours from January 4, 2010 (the effective date of FAA AD 2009–24–05), or before January 1, 2011, whichever comes first.

FAA AD Differences

(g) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) by requiring replacing the FOHE within 6,000 flight hours after the effective date of this AD for RB211–Trent 500 and RB211–Trent 700 series turbofan engines or January 4, 2010 for RB211–Trent 800 series turbofan engines, rather than within 6,000 flight hours from July 10, 2009.

Previous Credit

(h) For RB211–Trent 700 series engines, replacement of the FOHE with an FOHE that incorporates the modifications specified in Rolls-Royce plc ASB No. RB.211–79–AG338, dated September 29, 2009, complies with the replacement requirement specified in paragraph (e)(2) of this AD.

(i) For RB211–Trent 800 series engines, replacement of the FOHE with an FOHE that incorporates the modifications specified in Rolls Royce plc ASB No. RB.211–79–AG257, dated June 24, 2009, complies with the replacement requirement specified in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(j) 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

(k) Refer to MCAI AD 2009–0142, dated July 13, 2009, MCAI AD 2009–0257, dated December 3, 2009, for related information. Contact Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936, for a copy of the service information referenced in this AD.

(l) 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 December 31, 2009.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. E9–31394 Filed 1–5–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 147

[Docket No. USCG–2009–0955]

RIN 1625–AA00

Safety Zone; FRONTIER DISCOVERER, Outer Continental Shelf Drillship, Chukchi and Beaufort Sea, Alaska

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a temporary safety zone around the DRILLSHIP *FRONTIER DISCOVERER,* while anchored on location in order to drill exploratory wells at various prospects located in the Chukchi and Beaufort Sea Outer Continental Shelf, Alaska, from 12:01 a.m. on July 1, 2010 through 11:59 p.m. on October 31, 2010. The purpose of the temporary safety zone is to protect the DRILLSHIP from vessels operating outside normal shipping channels and fairways. Placing a temporary safety zone around the DRILLSHIP will significantly reduce the threat of allisions, oil spills, and releases of natural gas, and thereby protect the safety of life, property, and the environment.

DATES: Comments and related material must be received by the Coast Guard on or before February 5, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–2009–0955 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 LCDR Ken Phillips, District Seventeen, Office of Prevention, Coast Guard; telephone 907–463–2821, e-mail *Kenneth.G.Phillips@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–2009–0955), 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 *http://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*, click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2009–0955'' in the ''Keyword'' box. Click ''Search'' 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*, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box, insert USCG–2009–0955 and click ''Search.'' Click the ''open Docket Folder'' in the ''Actions'' 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 one by 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 the establishment of a temporary safety zone around the DRILLSHIP *FRONTIER DISCOVERER* while anchored on location in order to drill exploratory wells in several prospects located in the Chukchi and Beaufort Seas during the 2010 drilling season.

The request for the temporary safety zone was made by Shell Exploration & Production Company due to safety concerns for both the personnel aboard the *FRONTIER DISCOVERER* and the environment. Shell Exploration & Production Company indicated that it is highly likely that any allision or inability to identify, monitor or mitigate ice-related hazards that might be encountered would result in a catastrophic event. In evaluating this request, the Coast Guard explored relevant safety factors and considered several criteria, including but not limited to: (1) The level of shipping activity around the operation; (2) safety concerns for personnel aboard the vessel; (3) concerns for the environment given the sensitivity of the environmental and subsistence importance to the indigenous population; (4) the likeliness that an allision would result in a catastrophic event based on a lack of established shipping fairways, fueling and supply storage/operations, and size of the crew; (5) the recent and potential future maritime traffic in the vicinity of the proposed areas; (6) the types of vessels navigating in the vicinity of the proposed area; and (7) the structural configuration of the vessel. Navigation in the vicinity of the safety zone could consist of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel.

Results from a thorough and comprehensive examination of the criteria, IMO guidelines, and existing regulations warrant the establishment of the proposed temporary safety zone. The proposed regulation would reduce significantly the threat of allisions, oil spills, and releases and increase the safety of life, property, and the environment in the Chukchi and Beaufort Seas by prohibiting entry into the zone unless specifically authorized by the Commander, Seventeenth Coast Guard District.

The proposed temporary safety zone will be around the *FRONTIER DISCOVERER* while anchored on location in order to drill exploratory wells approximately 52 to 108 nautical miles off the northwest coast in the Chukchi Sea and 11 to 16 nautical miles off the northern coast in the Beaufort Sea Outer Continental Shelf, Alaska.

Shell Exploration & Production Company has five proposed drill sites within the Burger, Crackerjack, and SW Shoebill prospects, Chukchi Sea, Alaska. Additionally Shell Exploration & Production Company has two proposed drill sites within the Suvulliq and Torpedo prospects, Camden Bay, Beaufort Sea, Alaska (See Table 1).

TABLE 1—PROSPECT LOCATIONS

Prospect	Area	Block	Lease No.	Latitude	Longitude
Burger	Posey	6764	OCS–Y–2280	N71°18′17.2739″	W163°12′45.9891″
Burger	Posey	6714	OCS–Y–2267	N71°20′13.9640″	W163°12′21.7460″
Burger	Posey	6912	OCS–Y–2321	N71°10′24.0292″	W163°28′18.5219″
Crackerjack	Karo	6864	OCS–Y–2111	N71°13′58.9211″	W166°14′10.7889″
SW Shoebill	Karo	7007	OCS–Y–2142	N71°04′24.4163″	W167°13′38.0886″
Sivulliq	Flaxman Is	6658	OCS–Y–1805	N70°23′29.5814″	W145°58′52.5284″
Torpedo	Flaxman Is	6610	OCS–Y–1941	N70°27′01.6193″	W145°49′32.0650″

During the 2010 timeframe, Shell Exploration & Production Company may drill up to three exploration wells at the five identified Chukchi Sea prospects and two exploration wells at the identified Camden Bay, Beaufort Sea prospects depending on favorable ice conditions, weather, sea state, and any other pertinent factors. Each of these drill sites will be permitted for drilling in 2010 to allow for operational flexibility in the event sea ice conditions prevent access to one or more locations. The number of actual wells that will be drilled will depend on ice conditions and the length of time available for the 2010 drilling season. The predicted ''average'' drilling season, constrained by prevailing ice conditions and regulatory restrictions, is long enough for two to three typical exploration wells to be drilled.

The actual order of drilling activities will be controlled by an interplay between actual ice conditions immediately prior to a rig move, ice forecasts, any regulatory restrictions with respect to the dates of allowed operating windows, whether the planned drilling activity involves only drilling the shallow non-objective section or penetrating potential hydrocarbon zones, the availability of permitted sites having approved shallow hazards clearance, the anticipated duration of each contemplated drilling activity, the results of preceding wells and Marine Mammal Monitoring and Mitigation plan requirements.

All planned exploration drilling in the identified lease blocks will be conducted with the *FRONTIER DISCOVERER.* The *FRONTIER DISCOVERER* is a true drillship, and is a largely self-contained drilling vessel that offers full accommodations for up to 124 persons. The hull has been reinforced for ice resistance.

The *FRONTIER DISCOVERER* has a ''persons on board'' capacity of 124, and it is expected to be at capacity for most of its operating period. The *FRONTIER DISCOVERER's* personnel will include its crew, as well as Shell employees, third party contractors, Alaska Native Marine Mammal Observers and possibly Minerals Management Service (MMS) personnel.

While conducting exploration drilling operation the *FRONTIER DISCOVERER* will be anchored. The anchoring system utilized will consist of an 8-point anchored mooring spread attached to the turret of the *FRONTIER DISCOVERER* and could have a maximum anchor radius of 3,600 ft (1,100 m). The anchor spread, which radiates from the center of the *FRONTIER DISCOVERER,* may pose a fouling hazard from any vessel attempting to anchor within the anchor spread. Fouling of the *FRONTIER DISCOVERER* anchor lines may endanger the DRILLSHIP, its 124 onboard and the third party vessel.

The center point of the *FRONTIER DISCOVERER* will be positioned within one of the seven prospect locations in the Chukchi or Beaufort Sea at the coordinates listed (See Table 1).

The *FRONTIER DISCOVERER* will move into the Chukchi or Beaufort Sea on or about July 1, 2010 and onto a prospect location when ice allows. Drilling will be curtailed on or before October 31, 2010. The DRILLSHIP and support vessels will exit the Chukchi and Beaufort Sea at the conclusion of the 2010 drilling season.

Discussion of Proposed Rule

The proposed temporary safety zone would encompass the area within 500 meters (1,640.4 feet) from each point on the outer edge of the *FRONTIER DISCOVERER* while anchored on location in order to drill exploratory wells. No vessel would be allowed to enter or remain in this proposed safety zone except the following: An attending vessel or a vessel authorized by the Commander, Seventeenth Coast Guard District or a designated representative. They may be contacted on VHF–FM Channel 13 or 16 or by telephone at 907–463–2000.

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.

This rule is not a significant regulatory action due to the location of the *FRONTIER DISCOVERER* in the Chukchi and Beaufort Seas Outer Continental Shelf, Alaska, and its distance from both land and safety fairways. Vessels traversing waters near the proposed safety zone will be able to safely travel around the zone without incurring additional costs.

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 might be small entities: The owners or operators of vessels intending to transit or anchor in the locations where the exploratory wells will be drilled (See Table 1).

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will enforce a temporary safety zone around the *FRONTIER DISCOVERER* while anchored and on location in order to drill exploratory wells in the Chukchi and Beaufort Seas is not frequented by vessel traffic and is not in close proximity to a safety fairway. Further, vessel traffic can pass safely around the safety zone without incurring additional costs.

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 LCDR Ken Phillips, District Seventeen, Office of Prevention, Coast Guard; telephone 907–463–2821, e-mail *Kenneth.G.Phillips@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 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 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 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**. 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 147

Continental shelf, Marine safety, Navigation (water).

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 147 as follows:

PART 147—SAFETY ZONES

1. The authority citation for part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

2. Add § 147.T17–001 to read as follows:

§ 147.T17.001 Safety Zone; FRONTIER DISCOVERER, Outer Continental Shelf Drillship, Chukchi and Beaufort Sea, Alaska.

(a) Description. The *FRONTIER DISCOVERER* will be engaged in exploratory drilling operations at various locations in the Chukchi and Beaufort Sea from July 1, 2010 through October 31, 2010. The DRILLSHIP will be anchored while conducting exploratory drilling operations with the center point of the vessel located at the coordinates listed in Table 1. These coordinates are based upon [NAD 83] UTM Zone 3.

TABLE 1—PROSPECT LOCATIONS

Prospect	Area	Block	Lease No.	Latitude	Longitude
Burger	Posey	6764	OCS–Y–2280	N71°18′17.2739″	W163°12′45.9891″
Burger	Posey	6714	OCS–Y–2267	N71°20′13.9640″	W163°12′21.7460″
Burger	Posey	6912	OCS–Y–2321	N71°10′24.0292″	W163°28′18.5219″
Crackerjack	Karo	6864	OCS–Y–2111	N71°13′58.9211″	W166°14′10.7889″
SW Shoebill	Karo	7007	OCS–Y–2142	N71°04′24.4163″	W167°13′38.0886″
Sivulliq	Flaxman Is	6658	OCS–Y–1805	N70°23′29.5814″	W145°58′52.5284″
Torpedo	Flaxman Is	6610	OCS–Y–1941	N70°27′01.6193″	W145°49′32.0650″

The area within 500 meters (1,640.4 feet) from each point on the outer edge of the vessel while anchored on location is a safety zone.

(b) Regulation. No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel; or

(2) A vessel authorized by the Commander, Seventeenth Coast Guard District.

Dated: December 17, 2009.

C.C. Colvin,

Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.

[FR Doc. E9–31351 Filed 1–5–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0766; FRL–8801–2]

RIN 2070–AJ28

Pesticide Tolerance Crop Grouping Program II; Revision to General Tolerance Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to its pesticide tolerance crop grouping regulations, which allow establishment of tolerances for multiple related crops, based on data from a representative set of crops. The present revision would create a new crop group for oilseeds, expand existing crop groups by adding new commodities, establish new crop subgroups, and revise the representative crops in some groups. EPA expects these revisions to promote greater use of crop groupings for tolerance-setting purposes and, in particular, will assist in making available lower risk pesticides for minor crops both domestically and in countries that export food to the United States. This is the second in a series of planned crop group updates expected to be proposed over the next several years. EPA is also proposing to delete 40 CFR 180.1(h) which addresses when tolerances apply to post-harvest uses.

DATES: Comments must be received on or before March 8, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0766, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006-0766. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://*

www.regulations.gov, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT:

Ramé Cromwell, Field and External Affairs Division, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308-9068; fax number: (703) 305-5884; e-mail address: *cromwell.rame@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer. Potentially affected entities may include, but are not limited to: Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.

Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.

Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.

Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. Tolerance-Setting Requirements and Petition from Inter-regional Research Project Number 4 Program to Expand the Existing Crop Grouping System

EPA is authorized to establish maximum residue limits or ''tolerances'' for pesticide chemical residues in food under section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a). EPA establishes pesticide tolerances only after determining that aggregate exposure to the pesticide is safe. The U.S. Food and Drug Administration and the U.S. Department of Agriculture together enforce compliance with tolerance limits.

Traditionally, tolerances are established for a specific pesticide/commodity combination. However, under EPA's crop grouping regulation (40 CFR 180.41) a single tolerance may be established that applies to a group of related commodities. For example, the citrus crop group covers 11 different citrus fruits including oranges, grapefruit, lemons, and limes among others. Crop group tolerances may be established based on residue data only on designated representative commodities within the group. Representative commodities are selected based on EPA's determination that they are likely to bear the maximum level of residue that could occur on any crop within the group. Once the group tolerance is established, the tolerance level applies to all agricultural commodities within the group. It is also possible to request a crop group tolerance with a particular member of the crop excluded. An example of exclusion to a crop group would be a tolerance for the Stone Fruit group 12, except peach. In this crop group, residue data for cherry and plum are used to establish a group tolerance for the stone fruit group, except peach. Exclusions are requested when variations in residue levels within a group for a particular pesticide make a crop group tolerance otherwise inappropriate. See 40 CFR 180.40(h).

This proposed rule is the second in a series of planned crop group revisions expected to be completed over the next several years. Specific information regarding the history of the crop group regulations, the previous amendments to the regulations and the process for revising crop groups can be found in the **Federal Register** of December 7, 2007 (72 FR 69150). Specific information regarding how the Agency implements crop group revisions can be found in the 40 CFR 180.40(j).

Today's proposal is based upon four petitions developed by the International Crop Groupings Consulting Committee (ICGCC) workgroup and submitted to EPA by a nation-wide cooperative effort called the Inter-regional Research Project Number 4 (IR-4). These petitions and the monographs supporting them have been included in the docket for the proposed rule. EPA expects that a series of additional petitions seeking amendments and changes to the crop groupings regulations (40 CFR 180.41) will originate from the ICGCC workgroup over the next few years.

B. International Considerations

1. *NAFTA partner involvement in this proposal.* EPA's Chemistry Science Advisory Council (ChemSAC), an internal Agency peer review committee, provided a detailed analysis for each proposed crop group to Canada's Pest Management Regulatory Agency (PMRA), IR-4, and the government of

Mexico for their review and comment and invited these parties to participate in the ChemSAC meeting to finalize the recommendation of the petitions. PMRA has indicated that it will in parallel with the United States (U.S.) effort and under the authority of Canada's Pest Control Products (PCP) Act (2002) establish equivalent crop groups. Once the new or updated crop groups become effective in the United States, Mexico will have them as a reference for the establishment of maximum residue limits in Mexico.

EPA will provide a ''reviewer's guide'' describing the crop grouping amendments and explaining how to express the changes to the crop group in the **Federal Register** to IR-4 and PMRA in support of implementation and to inform the regulatory community.

2. *Relationship of this proposal to Codex activities*. The delegations of the United States and Canada to the Codex Committee on Pesticide Residues (CCPR) continued efforts in 2009 to harmonize the NAFTA crop groups and representative commodities with those being developed by Codex as part of their revision of the Codex Classification of Foods and Feeds. Canada, the United States, and IR-4 are working closely with the chair of the Codex group (Netherlands and the United States) to coordinate the U.S. crop group revisions with the revised crop groups going into Codex. The goals are to expand the crops in each group to include numerous minor crops, to minimize differences within and among the United States and Codex groups, and to develop representative commodities for each group that will be acceptable on an international basis. To date, CCPR has advanced eight crop groups in the adoption process.

C. Specific Revisions—Phasing out Pre-existing Crop Groups

This section explains the revisions to the crop group regulations in the first final rule dated December 7, 2007 (72 FR 69150) and should be used for guidance.

EPA has amended the generic crop group regulations to include an explicit scheme for how revised crop groups will be organized in the regulations.

In brief, the regulations now specify that when a crop group is amended in a manner that expands or contracts its coverage of commodities, EPA will: (1) Retain the pre-existing crop group in 40 CFR 180.41; (2) insert the revised crop group immediately after the pre-existing crop group in 40 CFR 180.41; and (3) title the revised crop group in a way that clearly differentiates it from the pre-existing crop group. The revised crop group will retain roughly the same name and number as the pre-existing group except that the number will be followed by a hyphen and the final two digits of the year it is established. Where additions to a crop group make the pre-existing crop group name misleading, EPA will amend the name as well as the number. For example, today EPA is proposing to revise Crop Group 8: Fruiting Vegetables Group (Except Cucurbits). The revised group will be titled Crop Group 8-09: Fruiting Vegetable Group.

Tolerances established for revised crop groups will include the new number (and new name, if applicable) so that it is apparent on the face of the tolerance regulation what commodities are covered. Similarly, it will be clear what tolerances for pre-existing crop groups are covered since these existing tolerance regulations use the pre-existing crop group names.

Although EPA will initially retain pre-existing crop groups that have been superseded by revised crop groups, EPA will not establish new tolerances under the pre-existing groups. Further, EPA plans to eventually convert tolerances for any pre-existing crop groups to tolerances with the coverage of the revised crop group. This conversion will be effected both through the registration review process and in the course of establishing new tolerances for a pesticide. To this end, EPA requests that petitioners for tolerances address this issue in their petitions. For example, assuming EPA adopts the amendment to Crop Group 8: Fruiting Vegetables (Except Cucurbits.), any tolerance petition for a pesticide that has a Group 8 tolerance should include a request that the Group 8 tolerance be amended to a Group 8-09 tolerance, since the representative commodities are equivalent. When all crop group tolerances for a superseded crop group have been revised or removed, EPA will remove the superseded group from § 180.41.

III. Specific Proposed Revisions

A. Crop Group 8-09 Fruiting Vegetables Group

EPA is proposing to revise the fruiting vegetables crop group in the following manner.

1. *Change name*. EPA proposes to change the pre-existing name Crop Group 8, Fruiting Vegetables (Except Cucurbits) by dropping the parenthetical ''(Except Cucurbits).'' The term ''Except Cucurbits'' is not necessary in the group name because cucurbits are not included in the listed commodities for the group; this parenthetical has not been used for establishing tolerances for this fruiting vegetables group since 2002, and cucurbits have their own crop group specifically labeled the ''Crop Group 9: Cucurbits Vegetable Group,'' 40 CFR 180.41(c)(10).

2. *Add commodities*. EPA proposes to amend the existing Crop Group 8 by expanding it from 6 to 21 commodities. The existing crop group consists of the following six commodities: (1) Eggplant, *Solanum melongena*; (2) Ground cherry, *Physalis* spp.; (3) Pepino, *Solanum muricatum*; (4) Pepper, *Capsicum* spp., includes bell pepper, chili pepper, cooking pepper, pimento, sweet pepper; (5) Tomatillo, *Physalis ixocarpo*; (6) Tomato, *Lycopersicum esculentum*.

EPA proposes to expand Crop Group 8-09 to include 15 commodities as follows: (1) African eggplant, *Solanum macrocarpon* L.; (2) Bush tomato, *Solanum centrale* J.M. Black; (3) Cocona, *Solanum sessiliflorum* Dunal; (4) Currant tomato, *Lycopersicon pimpinellifolium* (L.) Mill.; (5) Garden huckleberry, *Solanum scabrum* Mill.; (6) Goji berry, *Lycium barbarum* L.; (7) Martynia, *Proboscidea louisianica* (Mill.) Thell.; (8) Naranjilla, *Solanum quitoense* Lam.; (9) Okra, *Abelmoschus esculentus* (L.) Moench; (10) Pea eggplant, *Solanum torvum* Sw.; (11) Pepper, nonbell, *Capsicum Chinese* Jacq., *C. annuum* L. var. *annuum* , *C. frutescens L.*, *C. baccatum* L., *C. pubescens* Ruiz & Pav., *Capsicum* spp.; (12) Roselle, *Hibiscus sabdariffa* L.; (13) Scarlet eggplant, *Solanum aethiopicum* L.; (14) Sunberry, *Solanum retroflexum* Dunal; (15) Tree tomato, *Solanum betaceum* Cav.; including cultivars, varieties and/or hybrids of these commodities.

Commodities are being added to this crop group based on similarities and characteristics of *Solanaceae* or the Nightshade plant family which includes most of the fruiting vegetable group. These added crops have similar cultural practices, edible food portions, geographical locations, pest problems, established tolerances and similar exposure to residue levels.

Additionally, increased demand for these fruiting vegetables by U.S. growers and consumers has led to increased production of these commodities in the United States and this increased production has led to heightened demand for pesticides for a wide range of fruiting vegetables. Expanding the crop group will facilitate pesticide availability for fruiting vegetables. Increasing the variety of available pesticides for a crop enables U.S. growers to develop integrated pest

management programs (IPM), which can minimize pest resistance.

3. *Change the names of representative commodities*. EPA proposes to change the name of the representative commodity for the crop group ''one cultivar of non-bell pepper'' by deleting the hyphen from the term non-bell pepper. This change merely adopts current commodity vocabulary designations.

4. *Create crop subgroups*. EPA proposes to add three crop subgroups to the revised crop group. The subgroups are:

i. *Subgroup 8-09A*. Tomato subgroup. *Representative commodity*. Tomato, standard size and one cultivar of small tomato. Eleven commodities are included in this subgroup: Bush tomato; Cocona; Currant tomato; Garden huckleberry; Goji berry; Groundcherry; Naranjilla; Sunberry; Tomatillo; Tomato; Tree tomato; including cultivars, varieties and/or hybrids of these commodities.

ii. *Subgroup 8-09B*. Pepper/Eggplant subgroup. *Representative commodities*. Bell pepper and one cultivar of nonbell pepper. Ten commodities are included in this subgroup: African eggplant; Bell pepper; Eggplant; Martynia; Nonbell pepper; Okra; Pea eggplant; Pepino; Roselle; Scarlet eggplant; including cultivars, varieties and/or hybrids of these commodities.

iii. *Subgroup 8-09C*. Nonbell Pepper/Eggplant subgroup. *Representative commodities*. One cultivar of small nonbell pepper or one cultivar of small eggplant. Nine commodities are included in this subgroup: African eggplant; Martynia; Eggplant; Nonbell pepper; Okra; Pea eggplant; Pepino; Roselle; Scarlet eggplant; including cultivars, varieties and/or hybrids of these commodities.

The creation of these subgroups and the choice of representative commodities for these subgroups are based on similarities in pest pressures, cultural practices, and the edible portion of the commodity. EPA has also determined that residue data on the designated representative crops will provide adequate information on residue levels in crops and subgroups.

Subgroups will provide flexibility in the establishment of crop group tolerances which can be important for international harmonization. Tomatoes and peppers are the most commonly grown fruiting vegetable in the world and are increasing in popularity. They are used in various ethnic cuisines and per capita consumption has also increased.

B. Crop Group 10-09 Citrus Fruit Group

EPA is proposing to revise and expand the citrus crop group. EPA will retain pre-existing Crop Group 10 and title the revised group as Crop Group 10-09.

1. *Add commodities*. Crop Group 10 currently contains the following 12 commodities: (1) Calamondin, *Citrus mitis* x *Citrofortunella mitis*; (2) Citrus citron, *Citrus medica;* (3) Citrus hybrids, *Citrus* spp. includes chironja, tangelo, tangor; (4) Grapefruit, *Citrus paradisi*; (5) Kumquat, *Fortunella* spp.; (6) Lemon, *Citrus jambhiri, Citrus limon*; (7) Lime, *Citrus aurantiifolia*; (8) Mandarin (tangerine), *Citrus reticulata*; (9) Orange, sour, *Citrus aurantium*; (10) Orange, sweet, *Citrus sinensis*; (11) Pummelo, *Citrus grandis, Citrus maxima*; (12) Satsuma mandarin, *Citrus unshiu*.

EPA proposes to expand Crop Group 10-09 to include 16 commodities as follows: (1) Australian desert lime, *Eremocitrus glauca* (Lindl.) Swingle; (2) Australian finger lime, *Microcitrus australasica* (F. Muell.) Swingle; (3) Australian round lime, *Microcitrus australis* (A. Cunn. ex Mudie) Swingle; (4) Brown River finger lime, *Microcitrus papuana* Winters; (5) Japanese summer grapefruit, *Citrus natsudaidai* Hayata; (6) Mediterranean Mandarin, *Citrus deliciosa* Ten; (7) Mount White lime, *Microcitrus garrowayae* (F. M. Bailey) Swingle; (8) New Guinea wild lime, *Microcitrus warburgiana* (F. M. Bailey) Tanaka; (9) Russell River lime, *Microcitrus inodora* (F. M. Bailey) Swingle; (10) Sweet lime, *Citrus limetta* Risso; (11) Tachibana orange, *Citrus tachibana* (Makino) Tanaka; (12) Tahiti Lime, *Citrus latifolia* (Yu. Tanaka) Tanaka; (13) Tangerine (Mandarin), *Citrus reticulata* Blanco; (14) Tangor, *Citrus nobilis* lour. (15) Trifoliate orange, *Poncirus trifoliata* (L.) Raf.; (16) Uniq fruit, *Citrus aurantium* Tangelo group; including cultivars, varieties and/or hybrids of these.

The proposed addition of crops to this crop group is based on similarities and characteristics of the *Rutaceae* plant family. These added crops are all citrus fruits, have similar cultural practices, edible food portions, residue levels, geographical locations, pest problems and established tolerances.

2. *Change the crop group name*. EPA proposes to change the name of ''Crop Group 10: Citrus Fruits Group (*Citrus* spp., *Fortunella* spp.)'' to ''Crop Group 10-09: Citrus Fruit Group''. The name change reflects the addition of the new commodities to the group in that it includes commodities other than *Fortunella* spp.

3. *Create new subgroups*. EPA proposes to add three new subgroups to revised Crop Group 10-09 as follows:

i. *Orange Subgroup 10-09A*. *Representative commodities*. Orange or Tangerine/Mandarin. Twelve commodities are included in this subgroup: Calamondin; Citron; Citrus hybrids; Mediterranean Mandarin; Orange, sour; Orange, sweet; Satsuma mandarin; Tachibana orange; Tangelo; Tangerine (Mandarin); Tangor; Trifoliate orange; including cultivars, varieties and/or hybrids of these.

ii. *Lemon/Lime Subgroup 10-09B*. *Representative commodities*. Lemon or Lime. Twelve commodities are included in this subgroup: Australian desert lime; Australian finger lime; Australian round lime; Brown River finger lime; Kumquat; Lemon; Lime; Mount White lime; New Guinea wild lime; Russell River lime; Sweet lime; Tahiti Lime; including cultivars, varieties and/or hybrids of these.

iii. *Grapefruit Subgroup 10-09C*. *Representative commodity*. Grapefruit. Five commodities are included in this subgroup: Grapefruit; Japanese summer grapefruit; Pummelo; Tangelo; Uniq fruit; including cultivars, varieties and/or hybrids of these.

The creation of these subgroups and the choice of representative commodities for these subgroups are based on similarities in pest pressures, cultural practices, the edible portion of the commodity, and the geographic locations where these crops are grown. EPA has also determined that residue data on the designated representative crops will provide adequate information on residue levels in crops in the subgroup. The subgroups provide flexibility in the establishment of crop group tolerances which can be important for international harmonization.

4. *Revise the representative commodities*. EPA proposes to revise the representative crops for Crop Group 10-09 as follows: ''Sweet orange, lemon and grapefruit'' will be changed to ''Orange or tangerine/mandarin, lemon or lime and grapefruit.'' This change reflects the broader range of commodities in this group.

C. Crop Group 11-09: Pome Fruit Group

EPA is proposing to revise and expand the pome fruit crop. EPA will retain pre-existing Pome Fruit Crop Group 11 and title the revised group as Crop Group 11-09: Pome Fruit Group.

Add commodities. Crop Group 11 currently contains the following seven commodities: (1) Apple, *Malus domestica* Borkh; (2) Crabapple, *Malus spp.*; (3) Loquat, *Eriobotrya japonica*

(Thunb.) Lindl.; (4) Mayhaw, *Crataegus spp.*; (5) Pear, *Pyrus communis* L.; (6) Pear, oriental, *Pyrus communis* L.; (7) Quince, *Cydonia oblonga* Mill.;

EPA proposes to expand Crop Group 11 to include five commodities as follows: (1) Azarole, *Crataegus azarolus* L.; (2) Medlar, *Mespilus germanica* L.; (4) Pear, Asian, *Pyrus pyrifolia* (Burm f.) Nakai var. *culta* (Makino) Nakai; (5) Tejocote, *Crataegus mexicana* DC; including varieties, cultivars and/or hybrids of these.

The proposed addition of crops to this crop group is based on similarities and characteristics of the Pome Fruit Crop Group 11 as well as a comparison of pome fruits, their cultural practices, edible food portions, residue levels, geographical locations, pest problems, and established tolerances.

D. New Crop Group 20 Oilseed Group

EPA proposes to add a new crop group, entitled Oilseed Group as Crop Group 20. Oilseed group will include those crops from which oil is extracted from their seed and used to produce edible or inedible oils as well high-protein livestock meal.

1. *Commodities in group and representative commodities*. EPA proposes to include 32 commodities in Crop Group 20: (1) Borage, *Borago officinalis* L.; (2) Calendula, *Calendula officinalis* L.; (3) Castor oil plant, *Ricinus communis* L.; (4) Chinese tallowtree, *Triadica sebifera* (L.) Small; (5) Cottonseed, *Gossypium* spp.; (6) Crambe, *Crambe hispanica* L., *Crambe abyssinica* Hochst. ex R.E. Fr.; (7) Cuphea, *Cuphea hyssopifolia* Kunth; (8) Echium, *Echium plantagineum* L.; (9) Euphorbia, *Euphorbia esula* L.; (10) Evening primrose, *Oenothera biennis* L.; (11) Flax seed, *Linum usitatissimum* L.; (12) Gold of pleasure, *Camelina sativa* (L.) Crantz; (13) Hare's ear mustard, *Conringia orientalis* (L.) Dumort.; (14) Jojoba, *Simmondsia chinensis* (Link) C.K. Schneid.; (15) Lesquerella, *Lesquerella recurvata* (Engelm. ex A. Gray) S. Watson; (16) Lunaria, *Lunaria annua* L.; (17) Meadowfoam, *Limnanthes alba* Hartw. ex Benth.; (18) Milkweed, *Asclepias* spp. L.; (19) Mustard seed, *Brassica hirta* Moench, *Sinapis alba* L. subsp. *alba*; (20) Niger seed, *Guizotia abyssinica* (L.f.) Cass.; (21) Oil radish, *Raphanus sativus* L. var. *oleiformis* Pers.; (22) Poppy seed, *Papaver somniferum* L. subsp. *somniferum*; (23) Rapeseed, *Brassica* spp.; *Brassica napus* L.; (24) Rose hip, *Rosa rubiginosa* L.; (25) Safflower, *Carthamus tinctorious* L.; (26) Sesame, *Sesamum indicum* L.; *Sesamum radiatum* Schumach. & Thonn.; (27) Stokes aster, *Stokesia laevis* (Hill) Greene; (28) Sunflower, *Helianthus annuus* L.; (29) Sweet rocket, *Hesperis matronalis* L.; (30) Tallowwood, *Ximenia americana* L.; (31) Tea oil plant, *Camellia oleifera* C. Abel; (32) Vernonia, *Vernonia galamensis* (Cass.) Less. The representative commodities proposed for this group are cottonseed, rapeseed (canola varieties only), and sunflower.

Oilseed Crop Group 20 is proposed based on similarities in cultural practices, edible food portions, livestock feed items, residue levels, geographical locations, and pest problems. The Oilseed crop group should facilitate the approval in the United States of additional pesticides for these crops and both domestic and foreign tolerances, increasing opportunities for producers to grow new high value alternative minor crops, including potential biofuel crops. The proposed representative commodities were chosen based on the scope of their production and economic importance as well as on the similarities in cultural practices, pest problems, and commercial production. These three representative commodities account for greater than 95% of the harvested acres for the entire Oilseed crop group.

2. *Create crop subgroups*. EPA proposes to add three crop subgroups for Crop Group 20. The subgroups are:

i. *Rapeseed Subgroup 20A*. *Representative commodity*: Rapeseed, canola varieties only. The 17 commodities proposed for inclusion in this subgroup are: Borage; Crambe; Cuphea; Echium; Flax seed; Gold of pleasure; Hare's ear mustard; Lesquerella; Lunaria; Meadowfoam; Milkweed; Mustard seed; Oil radish; Poppy seed; Rapeseed; Sesame; Sweet rocket.

ii. *Sunflower Subgroup 20B*. *Representative commodity*: Sunflower, seed. The 14 commodities proposed for inclusion in this subgroup are: Calendula; Castor oil plant; Chinese tallowtree; Euphorbia; Evening primrose; Jojoba; Niger seed; Rose hip; Safflower; Stokes aster; Sunflower; Tallowwood; Tea oil plant; Vernonia.

iii. *Cottonseed Subgroup 20C*. *Representative commodity*: Cottonseed. The one commodity proposed for inclusion in this subgroup is: Cottonseed.

The creation of these subgroups and the choice of representative commodities for these subgroups are based on similarities in pest pressures, cultural practices, the edible portion of the commodity, and the geographic locations where these crops are grown. EPA has also determined that residue data on the designated representative crops will provide adequate information on residue levels in crops and subgroup. The subgroups provide flexibility in the establishment of crop group tolerances which can be important for international harmonization.

E. Amendment to Definitions and Interpretations

EPA proposes to revise the commodity definition in 40 CFR 180.1(g) for Citrus Group as follows:

Tangerines = Tangerine (mandarin or mandarin orange), Clementine, Mediterranean mandarin, Satsuma mandarin, Tangelo, Tangor, cultivars and varieties.

F. Amendment to 40 CFR 180.1(h)

EPA proposes to delete 40 CFR 180.1(h) that reads: ''Unless otherwise specified, tolerances and exemptions established under the regulations in this part apply to residues from only preharvest application of the chemical.'' EPA is proposing to delete this provision for two reasons. First, EPA believes that use information should generally be avoided in the tolerance listings because such information is difficult to enforce and is more completely addressed through other means, such as pesticide labels. Second, removal of § 180.1(h) will not result in any increased exposure under existing tolerance due to expansion of post-harvest uses cannot be expanded absent pre-market approval by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, and the FFDCA, as appropriate.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has designated this proposed rule as a not-significant regulatory action under section 3(f) of the Executive Order.

This action is one in a series of planned crop group updates. EPA prepared an analysis of the potential costs and benefits related to its pesticide tolerance crop grouping regulations for the first crop grouping final rule published December 7, 2007 (72 FR 69150). This analysis is contained in ''Economic Analysis of the Expansion of the Crop Grouping Program.'' A copy of the analysis is available in the docket and is briefly summarized here.

This is a burden-reducing regulation. Crop grouping has saved money by allowing the results of pesticide exposure studies for one crop to be applied to other, similar crops. This

action proposes to expand certain existing crop groups and to add one new crop group. Crop groupings will assist in making available lower risk pesticides for minor crops both domestically and in countries that export food to the U.S. Minor crop and specialty crop producers will benefit because lower registration costs will encourage pesticide manufacturers to register more pesticides for use on minor and/or specialty crops, providing these growers with additional lower-risk pesticide options. The increased coverage of tolerances to imported commodities may result in a larger supply of imported and domestically produced specialty produce at potentially lower costs and treated with lower-risk pesticides which also benefit consumers. EPA believes that data from representative crops will not underestimate the public exposure to pesticide residues through the consumption of treated crops. EPA and the IR-4 Project, will more efficiently use resources as a result of the rule. EPA will conserve resources if, as expected, new or expanded crop groups result in fewer emergency pesticide use requests from specialty crop growers. Further, new and expanded crop groups will likely reduce the number of separate risk assessments and tolerance rulemakings that EPA will have to conduct. Further benefits come from international harmonization of crop classification and nomenclature, harmonized commodity import and export standards and increased potential for resource sharing between EPA and pesticide regulatory agencies in other countries. Revisions to the crop grouping program will result in no appreciable costs or negative impacts to consumers, minor crop producers, specialty crop producers, pesticide registrants, the environment, or human health. No crop group tolerance for a pesticide can be established unless EPA determines that it is safe.

An example of the benefits of group groupings can be shown through of the impact of changes to Crop Group 3 in a prior rulemaking (72 FR 69150, December 7, 2007). That rulemaking expanded Crop Group 3, Bulb Vegetables from 7 to 25 crops, an increase of 18 from the original crop group. Prior to the expansion of the subgroup, adding tolerances for the 18 new crops would have required 18 field trials at a cost of approximately $5.4 million (assuming $300,000 per field trial), whereas after promulgation of the expanded group these 18 new crops could obtain coverage under a Crop Group 3 tolerance with no field trials in addition to those required on the representative commodities (which did not change with the expansion of the group). Fewer field trials means a greater likelihood that these commodities will obtain tolerance coverage under the FFDCA, aiding growers, and the administrative costs of both the IR-4 testing process and the EPA review process will be reduced.

The benefits of the rule proposed today can be shown through the example of the impact of changes to Crop Group 3 in a prior rulemaking (72 FR 69150, December 7, 2007). That rulemaking expanded Crop Group 3, Bulb Vegetables from 7 to 25 crops, an increase of 18 from the original crop group. Prior to the expansion of the subgroup, adding tolerances for the 18 new crops would have required 18 field trials at a cost of approximately $5.4 million (assuming $300,000 per field trial), whereas after promulgation of the expanded group these 18 new crops could obtain coverage under a Crop Group 3 tolerance with no field trials in addition to those required on the representative commodities (which did not change with the expansion of the group). Fewer field trials means a greater likelihood that these commodities will obtain tolerance coverage under the FFDCA, aiding growers, and the administrative costs of both the IR-4 testing process and the EPA reviewprocess will be reduced.

B. Paperwork Reduction Act

This rule does not contain any new information collection requirements that would need approval by OMB under the provisions of the Paper Reduction Act (PRA), 44 U.S.C. 3501 *et seq*. However, the proposed rule, when adopted as a final rule, is expected to reduce mandatory paperwork due to a reduction in required studies. The final rule will have the effect of reducing the number of residue chemistry studies because fewer representative crops would need to be tested under a crop grouping scheme, than would otherwise be required.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq*., the Agency hereby certifies that this proposed rule, when adopted as final, will not have a significant adverse economic impact on a substantial number of small entities. This proposed ruledoes not have any direct adverse impacts on small businesses, small non-profit organizations, or small local governments. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to the small business size standards established by the Small Business Administration (SBA); (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 andoperated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primarypurpose of the regulatory flexibility analyses is to identify and addressregulatory alternatives ''which minimize any significant economicimpact of the proposed rule on small entities'' (5 U.S.C. sections 603 and604). 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 a regulatory burden, or otherwise has positive economic effects on all of the small entities subject to the rule.

This proposed rule provides regulatory relief and regulatory flexibility. The new or expanded crop groups ease the process for pesticide manufacturers to obtain pesticide tolerances on greater numbers of crops. Pesticides will be more widely available to growers for use on crops, particularly specialty crops.

D. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4), EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate,or the private sector in any 1 year. Accordingly, this rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 13132

Pursuant to Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999), EPA has determined that this proposed rule does not have federalism implications, because 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 the

Order. Thus, Executive Order 13132 does not apply to this proposed rule.

F. Executive Order 13175

As required by Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), EPA has determined that this proposed rule does not have tribal implications because it will not have any affect on tribal governments, on the relationship between the Federal government andthe Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in the Order. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045

Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997) does not apply to this proposed rule because this action is not designated as an economically significant regulatory action as defined by Executive Order 12866 (see Unit IV.A.), nor does it establish an environmental standard, or otherwise have a disproportionate effect on children.

H. Executive Order 13211

This proposed 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 designated as a regulatory action as defined by Executive Order 12866 (see Unit IV.A.), nor is it likely to have any adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), (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 impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, and sampling procedures) that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not impose any technical standards that would require EPA to consider any voluntary consensus standards.

J. Executive Order 12898

Under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), the Agency has not considered environmental justice-related issues because this proposed rule does not have an adverse impact on the environmental and health conditions in low-income and minority communities.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities.

Dated: December 22, 2009.

Stephen A. Owens,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 would continue to read as follows:

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

2. Section 180.41 is amended as follows:

a. By redesignating paragraphs (c)(10) – (c)(22) as paragraphs (c)(11) – (c)(23), respectively, and by adding a new paragraph (c)(10).

b. By redesignating newly redesignated paragraphs (c)(13) – (c)(23) as paragraphs (c)(14) – (c)(24), respectively, and by adding a new paragraph (c)(13).

c. By redesignating newly redesignated paragraphs (c)(15) – (c)(24) as paragraphs (c)(16) – (c)(25), respectively, and by adding new paragraph (c)(15). and

d. By redesignating newly redesignated paragraph (c)(25) as paragraph (c)(26), and by adding a new paragraph (c)(25).

The amendments read as follows:

§ 180.41 Crop group tables.

* * * * *

(c) * * *

(10) *Crop Group 8-09*. Fruiting Vegetable Group.

(i) *Representative commodities*. Tomato (standard size) and one cultivar of small tomato; bell pepper and one cultivar of nonbell pepper; and one cultivar of small nonbell pepper or one cultivar of small eggplant.

(ii) *Commodities*. The following is a list of all commodities included in the Crop Group 8-09.

TABLE 1—CROP GROUP 8-09: FRUITING VEGETABLE GROUP

Commodities	Related crop subgroups
African eggplant, *Solanum macrocarpon* L	8-09B, 8-09C
Bush tomato, *Solanum centrale* J.M. Black	8-09A
Cocona, *Solanum sessiliflorum* Dunal	8-09A
Currant tomato, *Lycopersicon pimpinellifolium* (L.) Mill.	8-09A
Eggplant, *Solanum melongena* L.	8-09B, 8-09C
Garden huckleberry, *Solanum scabrum* Mill	8-09A
Goji berry, *Lycium barbarum* L.	8-09A
Groundcherry, *Physalis alkekengi* L., *P. grisea* (Waterf.) M. Martinez, *P. peruvian* L., *P. pubescens* L.	8-09A
Martynia, *Proboscidea louisianica* (Mill.) Thell.	8-09B, 8-09C
Naranjilla, *Solanum quitoense* Lam	8-09A
Okra, *Abelmoschus esculentus* (L.) Moench	8-09B, 8-09C
Pea eggplant, *Solanum torvum* Sw.	8-09B, 8-09C
Pepino, *Solanum muricatum* Aiton	8-09B, 8-09C
Pepper, bell, *Capsicum annuum* L. var. *annuum, Capsicum* spp.	8-09B
Pepper, nonbell, *Capsicum chinese* Jacq., *C. annuum* L. var. *annuum, C. frutescens* L., *C. baccatum* L., *C. pubescens* Ruiz & Pav., *Capsicum* spp	8-09B, 8-08C
Roselle, *Hibiscus sabdariffa* L.	8-09B, 8-09C
Scarlet eggplant, *Solanum aethiopicum* L.	8-09B, 8-09C
Sunberry, *Solanum retroflexum* Dunal	8-09A

TABLE 1—CROP GROUP 8-09: FRUITING VEGETABLE GROUP—Continued

Commodities	Related crop subgroups
Tomatillo, *Physalis philadelphica* Lam.	8-09A
Tomato, *Solanum lycopersicon* L., *Solanum lycopersicum* L. var. *lycopersicum*	8-09A
Tree tomato, *Solanum betaceum* Cav.	8-09A
Cultivars, varieties and/or hybrids of these.	

(iii) *Table*. The following Table 2 identifies the crop subgroups for Crop Group 8-09, specifies the representative commodities for each subgroup and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 8-09: SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 8-09A. Tomato subgroup. Tomato (Standard size and one cultivar of small tomato).	Bush tomato; Cocona; Currant tomato; Garden huckleberry; Goji berry; Groundcherry; Naranjilla; Sunberry; Tomatillo; Tomato; Tree tomato; cultivars, varieties, and/or hybrids of these.
Crop Subgroup 8-09B Pepper/Eggplant subgroup. Bell pepper and one cultivar of nonbell pepper.	African eggplant; Bell pepper; Eggplant; Martynia; Nonbell pepper; Okra; Pea eggplant; Pepino; Roselle, Scarlet eggplant; cultivars, varieties, and/or hybrids of these.
Crop Subgroup 8-09C Nonbell pepper/Eggplant subgroup. One cultivar small nonbell pepper or one cultivar of small eggplant.	African eggplant; Eggplant; Martynia; Nonbell pepper; Okra; Pea eggplant; Pepino; Roselle, Scarlet eggplant; cultivars, varieties, and/or hybrids of these.

* * * * *

(13) *Crop Group 10-09*. Citrus Fruit Group.

(i) *Representative commodities.* Orange or Tangerine/Mandarin, Lemon or Lime, and Grapefruit

(ii) *Commodities*. The following is a list of all the commodities in Crop Group 10:

TABLE 1—CROP GROUP 10-09: CITRUS FRUIT GROUP

Commodities	Related crop subgroups
Australian desert lime, *Eremocitrus glauca* (Lindl.) Swingle	10-09B
Australian finger lime, *Microcitrus australasica* (F. Muell.) Swingle	10-09B
Australian round lime, *Microcitrus australis* (A. Cunn. ex Mudie) Swingle	10-09B
Brown River finger lime, *Microcitrus papuana* Winters	10-09B
Calamondin, *Citrofortunella microcarpa* (Bunge) Wijnands	10-09A
Citron, *Citrus medica* L	10-09A
Citrus hybrids, *Citrus* spp. *Eremocitrus* spp., *Fortunella* spp., *Microcitrus* spp., and *Poncirus* spp.	10-09A
Grapefruit, *Citrus paradisi* Macfad.	10-09C
Japanese summer grapefruit, *Citrus natsudaidai* Hayata	10-09C
Kumquat, *Fortunella* spp.	10-09B
Lemon, *Citrus limon* (L.) Burm. f.	10-09B
Lime, *Citrus aurantiifolia* (Christm.) Swingle	10-09B
Mediterranean Mandarin, *Citrus deliciosa* Ten.	10-09A
Mount White lime, *Microcitrus garrowayae* (F. M. Bailey) Swingle	10-09B
New Guinea wild lime, *Microcitrus warburgiana* (F. M. Bailey) Tanaka	10-09B
Orange, sour, *Citrus aurantium* L.	10-09A
Orange, sweet, *Citrus sinensis* (L.) Osbeck	10-09A
Pummelo, *Citrus maxima* (Burm .) Merr.	10-09C
Russell River lime, *Microcitrus inodora* (F.M. Bailey) Swingle	10-09B
Satsuma mandarin, *Citrus unshiu* Marcow.	10-09A
Sweet lime, *Citrus limetta* Risso	10-09B
Tachibana orange, *Citrus tachibana* (Makino) Tanaka	10-09A
Tahiti Lime, *Citrus latifolia* (Yu. Tanaka) Tanaka	10-09B
Tangelo, *Citrus x tangelo* J.W. Ingram & H.E. Moore	10-09A, 10-09C
Tangerine (Mandarin), *Citrus reticulata* Blanco	10-09A
Tangor, *Citrus nobilis* Lour.	10-09A
Trifoliate orange, *Poncirus trifoliata* (L.) Raf.	10-09A
Uniq fruit, *Citrus aurantium* Tangelo group	10-09C
Cultivars, varieties and/or hybrids of these..	

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 10-09, specifies the representative commodities for each subgroup and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 10-09: SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 10-09A. Orange subgroup. Orange or tangerine/mandarin	Calamondin; Citron; Citrus hybrids; Mediterranean Mandarin; Orange, sour; Orange, sweet; Satsuma mandarin; Tachibana orange; Tangerine (Mandarin); Tangelo, Tangor; Trifoliate orange; cultivars, varieties, and/or hybrids of these.
Crop Subgroup 10-09B. Lemon/Lime subgroup. Lemon or lime	Australian desert lime; Australian finger-lime; Australian round lime; Brown River finger lime; Kumquat; Lemon; Lime; Mount White Lime; New Guinea wild lime; Russell River Lime; Sweet lime; Tahiti Lime; cultivars, varieties, and/or hybrids of these varieties.
Crop Subgroup 10-09C. Grapefruit subgroup. Grapefruit	Grapefruit; Japanese summer grapefruit; Pummelo; Tangelo; Uniq fruit; cultivars, varieties, and/or hybrids of these.

* * * * *

(15) *Crop Group 11-09.* Pome Fruit Group.

(i) *Representative commodities.* Apple and Pear.

(ii) *Commodities.* The following is a list of all the commodities in Crop Group 11-09.

TABLE 1—CROP GROUP 11-09: POME FRUIT GROUP—COMMODITIES

Apple, *Malus domestica* Borkh
Azarole, *Crataegus azarolus* L.
Crabapple, *Malus sylvestris* (L.) Mill., Malus prunifolia (Willd.) Borkh.
Loquat, *Eriobotrya japonica* (Thunb.) Lindl.

TABLE 1—CROP GROUP 11-09: POME FRUIT GROUP—COMMODITIES—Continued

Mayhaw, *Crataegus aestivalis* (Walter) Torr. & A. Gray, *C. opaca* Hook. & Arn., and *C. rufula* Sarg.
Medlar, *Mespilus germanica* L.
Pear, *Pyrus communis* L
Pear, Asian, *Pyrus pyrifolia* (Burm. f.) Nakai var. *culta* (Makino) Nakai
Quince, *Cydonia oblonga* Mill
Quince, Chinese, *Chaenomeles speciosa* (Sweet) Nakai, Pseudocydonia sinensis (Thouin) C.K. Schneid.
Quince, Japanese, Chaenomeles japonica (Thunb.) Lindl. ex Spach

TABLE 1—CROP GROUP 11-09: POME FRUIT GROUP—COMMODITIES—Continued

Tejocote, Crataegus mexicana DC.
Cultivars, varieties and/or hybrids of these.

* * * * *

(25) *Crop Group 20.* Oilseed Group.

(i) *Representative commodities.* Rapeseed (canola varieties only); sunflower, seed and cottonseed.

(ii) *Table.* The following Table 1 lists all the commodities listed in Crop Group 20 and identifies the related crop subgroups and includes cultivars and/or varieties of these commodities.

TABLE 1—CROP GROUP 20: OILSEED GROUP

Commodities	Related crop subgroups
Borage, *Borago officinalis* L.	20A
Calendula, *Calendula officinalis* L.	20B
Castor oil plant, *Ricinus communis* L.	20B
Chinese tallowtree, *Triadica sebifera* (L.) Small	20B
Cottonseed, *Gossypium* spp. L.	20C
Crambe, *Crambe hispanica* L.; *Crambe abyssinica* Hochst. ex R.E. Fr.	20A
Cuphea, *Cuphea hyssopifolia* Kunth	20A
Echium, *Echium plantagineum* L.	20A
Euphorbia, *Euphorbia esula* L.	20B
Evening primrose, *Oenothera biennis* L.	20B
Flax seed, *Linum usitatissimum* L.	20A
Gold of pleasure, *Camelina sativa* (L.) Crantz	20A
Hare's ear mustard, *Conringia orientalis* (L.) Dumort.	20A
Jojoba, *Simmondsia chinensis* (Link) C.K. Schneid.	20B
Lesquerella, *Lesquerella recurvata* (Engelm. ex A. Gray) S. Watson	20A
Lunaria, *Lunaria annua* L.	20A
Meadowfoam, *Limnanthes alba* Hartw. ex Benth.	20A
Milkweed, *Asclepias* spp. L.	20A
Mustard seed, *Brassica hirta* Moench, *Sinapis alba* L. subsp. alba	20A
Niger seed, *Guizotia abyssinica* (L.f.) Cass.	20B
Oil radish, *Raphanus sativus* L. var. oleiformis Pers	20A
Poppy seed, *Papaver somniferum* L. subsp. *Somniferum*	20A
Rapeseed, *Brassica* spp.; *Brassica napus* L.	20A
Rose hip, *Rosa rubiginosa* L.	20B
Safflower, *Carthamus tinctorious* L.	20B
Sesame, *Sesamum indicum* L.; *Sesamum radiatum* Schumach. & Thonn.	20A
Stokes aster, *Stokesia laevis* (Hill) Greene	20B
Sunflower, *Helianthus annuus* L.	20B

TABLE 1—CROP GROUP 20: OILSEED GROUP—Continued

Commodities	Related crop subgroups
Sweet rocket, *Hesperis matronalis* L.	20A
Tallowwood, *Ximenia americana* L.	20B
Tea oil plant, *Camellia oleifera* C. Abel	20B
Vernonia, *Vernonia galamensis* (Cass.) Less.	20B
Cultivars, varieties, and/or hybrids of these.	

(iii) *Table.* The following Table 2 identifies the crop subgroups for Crop Group 20, specifies the representative commodities for each subgroup and lists all the commodities included in each subgroup.

TABLE 2—CROP GROUP 20 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 20A. Rapeseed subgroup.	
Rapeseed, canola varieties only.	Borage, Crambe, Cuphea, Echium, Flax seed, Gold of pleasure, Hare's ear mustard, Lesquerella, Lunaria, Meadowfoam, Milkweed, Mustard seed, Oil radish, Poppy seed, Rapeseed, Sesame, Sweet rocket, cultivars, varieties, and/or hybrids of these.
Crop Subgroup 20B. Sunflower subgroup.	
Sunflower, seed.	Calendula, Castor oil plant, Chinese tallowtree, Euphorbia, Evening primrose, Jojoba, Niger seed, Rose hip, Safflower, Stokes aster, Sunflower, Tallowwood, Tea oil plant, Vernonia, cultivars, varieties, and/or hybrids of these.
Crop Subgroup 20C. Cottonseed Subgroup.	
Cottonseed.	Cottonseed, cultivars, varieties, and/or hybrids of these.

* * * * *

[FR Doc. E10–31397 Filed 01–05–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 320

[EPA–HQ–SFUND–2009–0265; FRL–9100–5]

RIN 2050–AG56

Identification of Additional Classes of Facilities for Development of Financial Responsibility Requirements Under CERCLA Section 108(b)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, establishes certain regulatory authorities concerning financial responsibility requirements. Specifically, the statutory language addresses the promulgation of regulations that require classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. In a July 28, 2009, **Federal Register** notice, the Environmental Protection Agency (EPA or the Agency) identified classes of facilities within the Hardrock Mining industry as those for which the Agency will first develop financial responsibility requirements under CERCLA Section 108(b). In that notice, EPA also stated its belief that additional classes of facilities—that is, other than those in the Hardrock Mining industry, also may warrant the development of financial responsibility requirements under CERCLA Section 108(b), and stated that EPA would publish a **Federal Register** notice, by December 2009, identifying additional classes of facilities it plans to evaluate regarding the development of financial responsibility requirements. As a result of examining available data and information, the Agency is identifying the classes of facilities within three industries—that is, the Chemical Manufacturing industry (NAICS 325), the Petroleum and Coal Products Manufacturing industry (NAICS 324), and the Electric Power Generation, Transmission, and Distribution industry (NAICS 2211), as those for which the Agency plans to develop, as necessary, a proposed regulation identifying appropriate financial responsibility requirements under CERCLA Section 108(b). EPA will carefully examine specific activities, practices, and processes involving hazardous substances at these facilities, as well as Federal and State authorities, policies, and practices to determine the risks posed by these classes of facilities and whether requirements under CERCLA Section 108(b) will effectively reduce these risks.

In addition, this **Federal Register** notice identifies the Waste Management and Remediation Services industry (NAICS 562), the Wood Product Manufacturing industry (NAICS 321), the Fabricated Metal Product Manufacturing (NAICS 332) industry, and the Electronics and Electrical Equipment Manufacturing industry (NAICS 334 and 335), as well as facilities engaged in the recycling of materials containing CERCLA hazardous substances—as requiring further study before EPA begins the regulatory development process. In identifying classes of facilities within these industries in this notice, the Agency does not intend to indicate that other classes in other industry sectors are no longer being considered.

DATES: Submit comments on or before February 5, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–2009–0834, by one of the following methods:

- *Electronic docket at: www.regulations.gov:* Follow the on-line instructions for submitting comments.

• *E-mail:* Comments may be sent by electronic mail (e-mail) to *superfund.docket@epa.gov*, Attention Docket ID No. EPA–HQ–SFUND–2009–0834. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

• *Fax:* Comments may be faxed to 202–566–0272; Attention Docket ID No. EPA–HQ–SFUND–2009–0834.

• *Mail:* Send your comments to the Identification of Additional Classes of Facilities for Development of Financial Responsibility Requirements under CERCLA Section 108(b) Docket, Attention Docket ID No., EPA–HQ–SFUND–2009–0834, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.

• *Hand Delivery:* Deliver two copies of your comments to the Identification of Additional Classes of Facilities for Development of Financial Responsibility Requirements under CERCLA Section 108(b) Docket, Attention Docket ID No., EPA–HQ–SFUND–2009–0834, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–2009–0834. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *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 *www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *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 *www.regulations.gov* or in hard copy at the Identification of Additional Classes of Facilities for Development of Financial Responsibility Requirements under CERCLA Section 108(b) Docket, Docket ID No. EPA–HQ–SFUND–2009–0834, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–0276. 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.

FOR FURTHER INFORMATION CONTACT: For more information on this notice, contact Ben Lesser, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, Mail Code 5302P, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (703) 308–0314; or (e-mail) *Lesser.Ben@epa.gov;* or Barbara Foster, U.S. Environmental Protection Agency, Office of Resource Conservation and Recovery, Mail Code 5303P, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone (703) 308–7057; or (e-mail) *Foster.Barbara@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. How Can I Get Copies of This Document and Other Related Information?

This **Federal Register** notice and supporting documentation are available in a docket EPA has established for this action under Docket ID No. EPA–HQ–SFUND–2009–0834. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information may not be publicly available, because for example, it may be CBI or other information, the disclosure of which is restricted by statute. Certain 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 Identification of Additional Classes of Facilities for Development of Financial Responsibility Requirements under CERCLA Section 108(b) Docket, Docket ID No. EPA–HQ–SFUND–2009–0834, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. The Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0270. A reasonable fee may be charged for copying docket materials.

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I. Introduction

Section 108(b), 42 U.S.C. 9608 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended, requires in specified circumstances that owners and operators of facilities establish evidence of financial responsibility. Specifically, it requires the promulgation of regulations that require classes of facilities to establish and maintain evidence of financial responsibility consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances. The section also instructs that the President: [1]

* * * identify those classes for which requirements will be first developed and publish notice of such identification in the **Federal Register.**

On July 28, 2009, EPA published that notice (see 74 FR 37213). In that notice, EPA identified classes of facilities within the Hardrock Mining industry as its priority for the development of financial responsibility requirements under CERCLA Section 108(b). For purposes of that notice, ''hardrock mining'' was defined as the extraction, beneficiation, or processing of metals (*e.g.*, copper, gold, iron, lead, magnesium, molybdenum, silver, uranium, and zinc) and non-metallic, non-fuel minerals (*e.g.*, asbestos, phosphate rock, and sulfur).

The notice also stated the Agency's belief that classes of facilities, in addition to those within the Hardrock Mining industry, may warrant the development of financial responsibility requirements under CERCLA Section 108(b), that the Agency would continue to gather and analyze data on additional classes of facilities, and would consider them for possible development of CERCLA Section 108(b) financial responsibility requirements. The Agency indicated its plans to publish a **Federal Register** notice addressing these additional classes of facilities by December 2009.

This **Federal Register** notice identifies additional classes of facilities—the classes within three industry sectors—for which the Agency plans to develop, as necessary, a proposed regulation identifying appropriate financial responsibility requirements under CERCLA Section 108(b). EPA will carefully examine specific activities, practices, and processes involving hazardous substances at these facilities, as well as Federal and State authorities, policies, and practices to determine the risks posed by these classes of facilities and whether requirements under CERCLA Section 108(b) will effectively reduce these risks. Any financial responsibility regulations developed by the Agency as the result of its analysis will be proposed in the **Federal Register** for public notice and comment.

This notice also identifies classes of facilities within four additional industry sectors, as well as classes of facilities engaged in recycling activities associated with materials containing CERCLA hazardous substances, which do not fit within a particular industry sector, as those classes for which the Agency plans to conduct further in-depth study before deciding whether to begin development of a proposed regulation.

Today's notice, its identification of classes, and its announcement of further study of other classes is not itself a rule, and does not create any binding duties or obligations on any party. Additional research, outreach to stakeholders, proposed regulations, review of public comments, and finalization of those regulations are needed before any facilities are subject to any financial responsibility requirements.

II. EPA's Approach for Identifying Additional Classes of Facilities

EPA has worked to determine which classes of facilities it should identify in this notice for evaluation regarding financial responsibility requirements. In contrast to the statutory mandate under CERCLA Section 108(b)(1) to publish the priority notice (that EPA satisfied in July 2009), there is no statutory requirement for EPA to publish today's notice. However, EPA is doing so as announced in the July 2009 notice.[2] As was the case with the July 2009 notice, EPA looked to the text of CERCLA Section 108(b) to inform its identification of facility classes. To begin with, the last sentence of Section 108(b)(1) states that ''[p]riority in the development of such requirements shall be accorded to those classes of facilities * * * which the President determines present the highest level of risk of injury.''

Examination of CERCLA Section 108(b) as a whole also reveals repeated references to the concept of ''risk.'' The first sentence of paragraph (b)(1) refers to ''requirements * * * that classes of facilities establish and maintain evidence of financial responsibility consistent with the *degree and duration of risk*'' and paragraph (b)(2) states that ''[t]he level of financial responsibility shall be initially established, and, when necessary, adjusted to *protect against the level of risk* which the President in his discretion believes is appropriate * * *.'' (emphasis added). Accordingly, EPA chose to look for indicators of risk and related effects to inform the selection of classes of facilities for developing requirements under CERCLA Section 108(b).

The Agency indicated in the July 2009 notice that it ''may take into account factors such as: (1) The amounts of hazardous substances released to the environment; (2) the toxicity of these substances; (3) the existence and proximity of potential receptors; (4) contamination historically found from facilities; (5) whether the causes of this contamination still exist; (6) experiences from Federal cleanup programs; (7) projected costs of Federal clean-up programs; and (8) corporate structures and bankruptcy potential.'' EPA also indicated that it would ''* * * consider whether financial responsibility requirements under CERCLA Section 108(b) will effectively reduce these risks.'' While some of the factors reflect the basic elements of risk evaluation (*i.e.,* the probability of release, exposure, and toxicity [3]), others more closely relate to the severity of consequences that result when risks are realized, such as the releases' duration and the exposures that can result if releases are not prevented or quickly controlled (*e.g.,* as a result of economic constraints). Finally, the Agency identified the following specific classes of facilities for examination: hazardous waste generators,[4] hazardous waste recyclers, metal finishers, wood treatment facilities, and chemical

[1] Executive Order 12580 delegates this responsibility to the Administrator of the U.S. Environmental Protection Agency (''EPA'' or ''the Agency'') for non-transportation related facilities. (See 52 FR 2923, January 29, 1987.)

[2] 74 FR 37213 at 37219.

[3] National Research Council, ''Risk Assessment in the Federal Government: Managing the Process,'' National Academy Press, Washington, DC, 1983.

[4] In the July 2009 notice, EPA identified hazardous waste generators, a diverse group of facilities, defined by the RCRA regulations, as a class of facilities it would consider as part of its analysis leading up to this **Federal Register** notice. However, to conduct its analysis for purposes of this notice, the Agency relied primarily on NAICS codes to define groups of facilities for purposes of comparison. The Agency believes those classes of facilities within NAICS codes 325 and 324 (identified for the development of financial responsibility requirements in this notice), and those within the Hardrock Mining industry (identified for financial responsibility requirements in the July 2009 notice), effectively cover the vast majority of hazardous waste generated (see Table 2). The Agency, therefore, believes that this is a more workable approach to addressing this diverse group of facilities.

manufacturers.[5] The Agency indicated that the list of additional classes of facilities ''may be revised as the Agency's evaluation proceeds.'' (See 74 FR 37213, at 37219, July 28, 2009).

To develop the list of classes of facilities discussed in this notice, EPA's analysis used information related to sites listed on the National Priorities List (NPL), data on hazardous waste generation from the 2007 Resource Conservation and Recovery Act (RCRA) Biennial Report (BR), and data from the Toxics Release Inventory (TRI).[6] These information sources will be explained below. EPA chose these sources because they are well-established, reliable sources of information on facilities associated with hazardous substances, and were readily available to the Agency. Moreover, these data sources generally address all of the factors noted in the July 2009 notice and cited above, either directly or indirectly. More specifically,

- The NPL information addresses the following factors (either directly or indirectly): (1) The amounts of hazardous substances released to the environment; (2) the toxicity of these substances; (3) the existence and proximity of potential receptors; (4) contamination historically found from facilities; (5) whether the causes of this contamination still exist; (6) experiences from Federal cleanup programs; (7) projected costs of Federal cleanup programs; and (8) corporate structures and bankruptcy potential.[7]
- The BR information addresses (either directly or indirectly) (1) the amounts of RCRA hazardous wastes[8] generated or managed.
- The TRI information addresses the following factors (either directly or indirectly): (1) The amounts of hazardous substances released to the environment; (2) the toxicity of these substances; and (5) whether the causes of this contamination still exist.

EPA recognizes that the NPL data reflects activity that, in some cases, pre-dates CERCLA, RCRA, and other legal requirements. In our request for comment about risks at the end of this notice, the Agency welcomes information about current releases of hazardous substances to the environment to help inform EPA's future actions.

The following sections describe EPA's evaluation and its results. However, EPA notes that while, in general, the Agency chose to identify those classes of facilities comprising a relatively large percentage or amounts of hazardous substances, it should not be assumed that other industry classes are no longer being considered and will not be identified for future rulemakings.

A. Analysis of National Priority List Information

The NPL is a list of national priorities for cleanups among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the U.S. (In addition to the list of sites on the NPL, file information about individual sites was also considered in developing today's notice.) The Hazard Ranking System, the scoring system EPA uses to assess the relative threat associated with releases or potential releases of hazardous substances from a site, is the primary method used to determine whether a site should be placed on the NPL.[9] The HRS takes into account the three elements of environmental and human health risk: (1) Probability of release; (2) exposure; and (3) toxicity. EPA generally will list on the NPL sites with scores of 28.50 or above. The HRS is a proven and accepted tool for evaluating and prioritizing the releases that may pose threats to human health and the environment throughout the nation. As of October, 2009, there were 1,495 proposed, final, and deleted non-Federal sites on the NPL. For purposes of this analysis, the Agency assigned each of the NPL sites the three-digit NAICS code[10] [11] that best identified the activities at the site, using available data and best professional judgment. The analysis thus identified the relative prevalence of industry sectors on the NPL.[12]

Based on this analysis, the Agency identified six industry sectors, and one group of facilities, on which to focus further: (1) The Waste Management and Remediation Services industry (NAICS 562) (including municipal and industrial landfills), with 465 sites; (2) the Chemical Manufacturing industry (NAICS 325), with 181 sites; (3) facilities engaged in the recycling of materials containing CERCLA hazardous substances, with 138 sites;[13] (4) the Wood Product Manufacturing industry (NAICS 321), with 94 sites; (5) the Fabricated Metal Product Manufacturing industry (NAICS 332), with 91 sites; (6) the Electronics and Electrical Equipment Manufacturing industry (NAICS 334 and 335), with 71 sites;[14]

[5] Although EPA did not solicit comment on the notice, it did receive correspondence related to this notice from a number of sources—Earth Justice; the Association of State and Territorial Solid Waste Management Officials; Treated Wood Council; Southern Pressure Treaters' Association; Superfund Settlements Project and RCRA Corrective Action Project; American Chemistry Council; American Petroleum Institute; and the Society of Chemical Manufactures and Affiliates.

Through this correspondence, the Agency received a number of comments on a range of issues related to development of financial responsibility requirements under CERLCA Section 108(b) including, but not limited to:

Suggestions regarding additional sectors to identify for financial responsibility requirements,

Concerns about the Agency's overall approach under CERCLA Section 108(b),

Suggestion regarding interpretation of the statutory language,

Suggestions for effective implementation of financial responsibility requirements,

Suggestions regarding the focus of rulemaking efforts under CERCLA Section 108(b), and

Industry-specific factors to consider in developing regulatory requirements.

This correspondence can be found in the docket for this **Federal Register** notice. The Agency will consider and address any comments received as part of its proposed and final rulemakings.

[6] TRI estimates include all on-site releases of CERCLA hazardous substances to the land, air and surface water, including those disposed of in RCRA Subtitle C hazardous waste land disposal units and Safe Drinking Water Act (SDWA) permitted underground injection (UIC) wells.

[7] While CERCLIS, the Superfund program's data base, and NPL site files do not account for corporate structures or bankruptcy potential, EPA notes that, as a practical matter and consistent with EPA's ''enforcement first'' policies, the lack of a viable party at a site is often a consideration that goes into the decision to list a particular site on the NPL.

[8] RCRA hazardous wastes are, under CERCLA Section 101(14), defined as CERCLA hazardous substances.

[9] EPA 2007. ''Introduction to the Hazard Ranking System (HRS).'' Available at: *http://www.epa.gov/superfund/programs/npl_hrs/hrsint.htm.*

[10] North American Industry Classification System (NAICS)—the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. NAICS codes are available at: *http://www.census.gov.*

[11] This information can be found in the docket for this **Federal Register** notice.

[12] In this analysis, EPA excluded sites identified within those classes of Hardrock Mining already discussed in the July 2009 notice.

[13] In the Agency's Superfund program database, some facilities were simply classified in categories that do not directly correspond with NAICS. Recyclers (REC), Transportation-related facilities (TS) and Product Storage facilities (PS) are included in these categories.

[14] In CERCLIS, the Superfund program's data base, NPL sites are not categorized by NAICS codes. Rather, CERCLIS uses ''site types'' to describe each of the NPL sites. These site types include the fields: manufacturing/processing/maintenance, recycling, waste management, and other. Within each site type, there are various ''subtypes.'' Manufacturing/processing/maintenance contains the following subtypes: chemicals and allied products, electronic/electrical equipment, lumber and wood products, oil and gas refining, and other. When assigning NAICS codes to facilities within the subtype ''electronic/electrical equipment,'' the Agency could not, based on information from the data base, distinguish between facilities within NAICS 334 (Computer and Electronic Product Manufacturing), and NAICS 335 (Electrical Equipment, Appliance, and Component Manufacturing), so conducted its analysis treating them as one industry sector (hereinafter referred to as ''the Electronics and Electrical Equipment Manufacturing'' industry). An analysis more detailed than that performed by the

Continued

and (7) the Petroleum and Coal Products Manufacturing industry (NAICS 324), with 30 sites. EPA focused on these seven industry categories because they comprise 1,073 sites, or approximately 70 percent of all non-Federal, proposed, finalized, and deleted sites on the NPL. The findings of the NPL analysis are shown in Table 1.

TABLE 1—TOP INDUSTRIES LISTED ON THE CERCLA NATIONAL PRIORITIES LIST FROM 1981–2009

Category or NAICS code	Includes NPL sites identified as:	Total number of sites	Percentage of total number of sites
562 Waste Management and Remediation Services	Industrial waste facility (non-generator), municipal solid waste landfill; co-disposal landfills (municipal and industrial).	465	30.7
325 Chemical Manufacturing	Chemicals/chemical waste recovery	181	11.9
REC Recycling of Materials Containing CERCLA Hazardous Substances.	Recycled oil/reclaimed copper; solvent recovery/reclamation; reprocessed solvent; recovered metals; used oil recycling, drums/tanks recycling.	138	9.1
321 Wood Products Manufacturing	Lumber, wood and paper bag products; wood preservers.	94	6.2
332 Fabricated Metal Product Manufacturing	Metal fabrication/finishing/coating and allied industries	91	6.0
334 Computer and Electronic Product Manufacturing 335 Electrical Equipment, Appliance, and Component Manufacturing*.	Electronic/electrical equipment	71	4.7
324 Petroleum and Coal Products Manufacturing	Oil and gas refining, coke production	30	1.9
TS Transportation-related Facilities	Trucks/ships/trains related components	25	1.6
PS Product Storage	Product storage/distribution	20	1.3
812 Personal and Laundry Services	Dry cleaners	19	1.3

* The Agency's CERCLA database does not differentiate facilities in NAICS 334 from those in NAICS 335 (*see* footnote 14).

The Agency next considered BR and TRI data. Those analyses are explained below.

B. Analysis of RCRA Biennial Report and Toxics Release Inventory Data

EPA, in partnership with the States, biennially collects information from large quantity hazardous waste generators, transporters, and treatment, storage, and disposal facilities regarding the generation, management, and final disposition of hazardous waste regulated under RCRA. The BR data, which includes the reporting facilities' NAICS codes, shows that in 2007 there are two industry sectors that generate the majority of hazardous waste [15]—the Chemical Manufacturing industry (NAICS 325) (approximately 19.8 million tons), and the Petroleum and Coal Products Manufacturing industry (NAICS 324) (approximately 4.2 million tons). These two industry sectors comprise more than 24 million tons, or approximately 74 percent of the total amount of hazardous waste generated annually (see Table 2), and with the Hardrock Mining industry, represent approximately 80 percent of all RCRA hazardous waste generated by large quantity generators. While the next three industry sectors—Waste Management and Remediation Services, Electronic and Electric Equipment Manufacturing, and Fabricated Metals Product Manufacturing—would include an additional 4.4 million tons (or approximately 14 percent) of additional hazardous waste, as is discussed later in this notice, the Agency believes, for the reasons discussed later in this notice, that it needs to conduct further investigation of these three industry sectors before it makes the decision to develop financial responsibility requirements for these classes of facilities.

TABLE 2—RCRA 2007 BIENNIAL REPORTING DATA ON WASTE GENERATION OF NPL-IDENTIFIED INDUSTRIAL SECTORS—TOP RANKING NAICS CODES

NAICS code	Description	Generated tons	Percentage of total amount of hazardous waste generated
325	Chemical Manufacturing	19,767,608	61.10
324	Petroleum and Coal Products Manufacturing	4,189,468	12.95
331	Primary Metal Manufacturing [16]	2,706,145	8.37
562	Waste Management and Remediation Services	2,690,809	8.32
334–335	Computer and Electric Product Manufacturing/Electrical Equipment, Appliance and Component Manufacturing.	1,155,014	3.57
332	Fabricated Metal Product Manufacturing	621,739	1.92
336	Transportation Equipment Manufacturing	188,102	0.58
928	National Security and International Affairs	140,946	0.43
424	Merchant Wholesalers, Nondurable Goods	76,678	0.24
326	Plastics and Rubber Products Manufacturing	62,887	0.19
327	Nonmetallic Mineral Product Manufacturing	55,031	0.17
333	Machinery Manufacturing	52,117	0.17

Agency for purposes of this notice will be necessary to further delineate the prevalence of each of these two industry sectors on the NPL.

[15] It should be noted that CERCLA hazardous substances include RCRA hazardous wastes.

TABLE 2—RCRA 2007 BIENNIAL REPORTING DATA ON WASTE GENERATION OF NPL-IDENTIFIED INDUSTRIAL SECTORS—TOP RANKING NAICS CODES—Continued

NAICS code	Description	Generated tons	Percentage of total amount of hazardous waste generated
321	Wood Product Manufacturing	48,923	0.15
541	Professional, Scientific, and Technical Services	45,288	0.14
561	Administrative and Support Services	43,846	0.13
339	Miscellaneous Manufacturing	38,970	0.12
493	Warehousing and Storage	33,443	0.10
488	Support Activities for Transportation	29,989	0.10
531	Real Estate	29,740	0.10
323	Printing and Related Support Activities	27,810	0.08
322	Paper Manufacturing	18,272	0.06
611	Educational Services	16,684	0.05
2211	Electric Power Generation, Transmission and Distribution	15,703	0.05
Total	Amount of Hazardous Waste Generated	32,331,213	

TRI is a database that contains detailed information on nearly 650 chemicals and chemical categories, many of which are hazardous substances under CERCLA, that over 23,000 industrial and other facilities manage through disposal or other releases, recycling, energy recovery, or treatment. The TRI data, which includes the reporting facilities' NAICS codes, shows that in 2007 two industry sectors identified in the NPL analysis were also among those reporting the largest quantities of on-site releases of hazardous substances (not including the Hardrock Mining industry)—*i.e.,* the Chemical Manufacturing industry (NAICS 325) (reporting the largest quantity); and the Waste Management and Remediation Services industry (NAICS 562). In addition, another sector emerged from the TRI analysis—the Electric Power Generation, Transmission and Distribution industry (NAICS 2211), and was the sector reporting the second-largest quantity of on-site releases of hazardous substances. (See Table 3.) These three industry sectors comprise approximately 530 million pounds, or approximately 25 percent, of the total amount of on-site releases of hazardous substances, and with the Hardrock Mining industry represent over 75 percent of the total amount of on-site releases of hazardous substances.

TABLE 3—2007 TRI ON-SITE RELEASES OF CERCLA HAZARDOUS SUBSTANCES FOR NPL-IDENTIFIED INDUSTRIAL SECTORS—TOP RANKING NAICS CODES

NAICS code	Description	On-site releases (1,000 lbs)	Percentage of total on-site releases
2122	Metal Ore Mining	1,099,573	51.1
325	Chemicals Manufacturing	220,246	10.2
2211	Electric Power Generation, Transmission and Distribution	161,053	7.5
331	Primary Metal Manufacturing	156,811	7.3
562	Waste Management and Remediation Services	152,397	7.1
311	Food Manufacturing	107,406	5.0
324	Petroleum and Coal Products Manufacturing	46,052	2.1
322	Paper Manufacturing	43,491	2.0
326	Plastics and Rubber Products Manufacturing	32,612	1.5
	No TRI NAICS code	28,578	1.3
336	Transportation Equipment Manufacturing	25,921	1.2
327	Nonmetallic Mineral Product Manufacturing	17,669	0.8
323	Printing and Related Support Activities	11,798	0.5
332	Fabricated Metal Product Manufacturing	10,292	0.5
337	Furniture and Related Product Manufacturing	7,180	0.3
321	Wood Product Manufacturing	6,479	0.3
334–335	Computer and Electric Product Manufacturing/Electrical Equipment, Appliance and Component Manufacturing.	5,840	0.3
2121	Coal Mining	5,473	0.2
3274	Lime and Gypsum Product Manufacturing	3,459	0.2
333	Machinery Manufacturing	2,690	0.1
339	Miscellaneous Manufacturing	2,488	0.1
313	Textile Mills	1,996	0.1
4247	Petroleum and Petroleum Products Merchant Wholesalers	1,388	0.1

[16] When the Agency assigned NAICS codes to the NPL sites (see Section II.A.), it included within the definition of Hardrock Mining many activities that fall within NAICS 331 Primary Metal Manufacturing. Thus, while Primary Metal Manufacturing ranks high in the TRI and BR analysis conducted for this notice, the Agency had already considered those releases in identifying the classes within Hardrock Mining for financial responsibility requirements in the July 2009 notice.

TABLE 3—2007 TRI ON-SITE RELEASES OF CERCLA HAZARDOUS SUBSTANCES FOR NPL-IDENTIFIED INDUSTRIAL SECTORS—TOP RANKING NAICS CODES—Continued

NAICS code	Description	On-site releases (1,000 lbs)	Percentage of total on-site releases
Total	Amount of On-Site Releases of Hazardous Substances	2,151,723	.....

C. Conclusions From the NPL/BR/TRI Analyses

As described in Section II.A. above, the analysis of the NPL provided the Agency with six industry sectors, and one group of facilities, to consider further—(1) The Waste Management and Remediation Services industry, (2) the Chemical Manufacturing industry, (3) facilities engaged in the recycling of materials containing CERCLA hazardous substances, (4) the Wood Product Manufacturing industry, (5) the Fabricated Metal Product Manufacturing industry, (6) the Electronics and Electrical Equipment Manufacturing industry, and (7) the Petroleum and Coal Products Manufacturing industry.

The Agency then evaluated data from the BR and TRI to determine whether any of the seven industry categories provided by the NPL analysis emerged as classes of facilities for further consideration because of the quantities of hazardous substances generated and managed. Finally, the Agency considered additional factors, which will be discussed below, to determine whether to begin the regulatory development process.

Analysis of the BR data, which is described in Section II.B. above, shows that two of the industry sectors identified in the NPL analysis generate the majority of hazardous waste—the Chemical Manufacturing industry, and the Petroleum and Coal Products Manufacturing industry. Further, the TRI data, also described in Section II.B. above, shows that in 2007, two industry sectors identified in the NPL analysis were also among those reporting the largest quantities of on-site releases of hazardous substances—the Chemical Manufacturing industry, and the Waste Management and Remediation Services industry.

Therefore, classes of facilities within two industry sectors emerged as clearly appropriate for consideration based on the results of the analysis—the Chemical Manufacturing industry (NAICS 325) and the Petroleum and Coal Products Manufacturing industry (NAICS 324).[17] Specifically, the Chemical Manufacturing industry (NAICS 325) was ranked second on the NPL analysis (representing approximately 12 percent of the NPL sites), ranked first on the BR analysis (representing approximately 61 percent of the total amount of hazardous waste generated), and ranked second on the TRI analysis (representing approximately 10 percent of the total on-site releases of hazardous substances). With respect to the Petroleum and Coal Products Manufacturing industry (NAICS 324), it ranked second on the BR analysis (representing approximately 13 percent of the total amount of hazardous waste generated), and sixth on the TRI analysis (representing approximately 2 percent of the total on-site releases of hazardous substances). While this industry sector did rank lower on the NPL analysis, we note that many petroleum refineries, as part of their operations, have released and are likely continuing to release hazardous substances to the environment, and thus, the actual number of facilities in this industry sector that have environmental releases is much larger than as measured by the NPL. Based on these data, the Agency believes it is appropriate to identify the classes within these two industry sectors as among those for which it plans to develop, as necessary, a proposed regulation identifying appropriate financial responsibility requirements under CERCLA Section 108(b).

In addition, the Agency believes it is appropriate to also identify classes of facilities within the Electric Power Generation, Transmission, and Distribution industry (NAICS 2211) as among those for which it will consider a proposed rulemaking regarding financial responsibility under CERCLA Section 108(b). Our basis for this is several-fold. Specifically, this industry sector ranked third in the TRI analysis, representing approximately 7.5 percent of total on-site releases of hazardous substances. Further, although it did not rank high in the BR analyses, it would not be expected to produce these results since coal combustion residuals (CCRs) are ''Bevill exempt'' [18] wastes, and thus not subject to BR reporting requirements. In addition, while this industry sector was not identified in the NPL analysis, the Agency has documented evidence of proven damages to groundwater or surface water in 27 damage cases [19] involving these wastes—17 cases of damage to groundwater, and ten cases of damage to surface water, including ecological damages in seven of the ten.[20] Finally, a recent catastrophic release in Tennessee of about one billion gallons of coal ash from the Tennessee Valley Authority's Kingston Plant has demonstrated the significant cleanup costs that can be generated by this industry sector. (This is so even though this industry sector was not identified as a relatively common presence on the NPL in the analysis above.) This additional information, discussed more fully in Section II.D.3 of this notice, supplements the NPL, BR, and TRI analyses to indicate that development of proposed financial responsibility requirements for this industry sector is appropriate.

As a result of evaluating this information, the Agency is today identifying classes of facilities within three industries—the Chemical

[17] The Waste Management and Remediation Services industry also seems, at first glance, to emerge from this analysis as appropriate for development of a proposed rule but, for reasons described in section II.E. of this notice, the Agency believes more information is needed regarding this category of facilities.

[18] The ''Bevill'' exemption is codified at 40 CFR 261.4(b)(7).

[19] Per the May 2000 Regulatory Determination (see 65 FR 32224), proven damage cases are those with (i) documented exceedances of primary MCLs or other health-based standards measured in groundwater at sufficient distance from the waste management unit to indicate that hazardous constituents have migrated to the extent that they could cause human health concerns, and/or (ii) where a scientific study demonstrates there is documented evidence of another type of damage to human health or the environment (*e.g.*, ecological damage), and/or (iii) where there has been an administrative ruling or court decision with an explicit finding of specific damage to human health and the environment.

[20] The 24 cases identified in EPA's ''Coal Combustion Waste Damage Case Assessments,'' July 9, 2007, available at: *http://www.regulations.gov/fdmspublic/component/main?main=DocumentDetail&d=EPA-HQ-RCRA-2006-0796-0015* with the addition of Martins Creek, Pennsylvania, where in August, 2005, a dam confining a 40-acre CCR surface impoundment failed, resulting in the discharge of 100 million gallons of coal ash and contaminant water; Gambrills, MD; and Kingston/TVA, TN.

Manufacturing industry (NAICS 325), the Petroleum and Coal Products Manufacturing industry (NAICS 324), and the Electric Power Generation, Transmission, and Distribution industry (NAICS 2211) as those for which the Agency plans to develop, as necessary, a proposed regulation identifying appropriate financial responsibility requirements under CERCLA Section 108(b). In identifying classes of facilities within these industries in this notice, the Agency does not intend to indicate that other classes in other industry sectors are no longer being considered. (See Section II.E. for discussion of additional classes of facilities that EPA plans to study further before deciding whether to initiate the development of a proposed regulation.)

D. Additional Information Regarding the Classes of Facilities for Which EPA Plans To Develop a Proposed Regulation

As was discussed above, the Agency is identifying in this **Federal Register** notice the classes of facilities within the Chemical Manufacturing (NAICS 325), Petroleum and Coal Products Manufacturing (NAICS 324), and Electric Power Generation, Transmission, and Distribution (NAICS 2211) industries as those for which EPA plans to develop, as necessary, a proposed regulation identifying appropriate financial responsibility requirements under CERCLA Section 108(b). EPA identified the classes within these industry sectors based on the analyses and information described above.

As was also discussed above, the Agency identified, in the July 2009 notice, eight factors it would take into consideration when evaluating any additional classes of facilities. To take these factors into account in its analysis, the Agency relied on readily available, reliable sources of information that reflected the factors—*i.e.,* the NPL, BR, and TRI (see discussion in Section II of this notice).

After identifying the classes of facilities in the Chemical Manufacturing, Petroleum and Coal Products Manufacturing, and Electric Power Generation, Transmission, and Distribution industries, the Agency further evaluated those industry sectors by gathering additional information related to the eight factors, to the extent it was practicable to do so. The results verified the Agency's analysis. The following discussion describes the results for each of the industry sectors, in turn.

1. Chemical Manufacturing (NAICS 325)

For purposes of this **Federal Register** notice, EPA has included the following classes of facilities, which are encompassed by the NAICS code 325 definition of the ''Chemical Manufacturing'' industry: facilities involved in the transformation of organic and inorganic raw materials by a chemical process and in the formulation of products.[21] As is explained below, chemical manufacturing facilities share common characteristics, and are thus being identified as a group. At the same time, those facilities included in the definition above differ such that ''chemical manufacturing facilities'' are properly considered to encompass multiple ''classes'' of facilities. The various classes in this **Federal Register** notice's definition of chemical manufacturing are primarily involved in one or more of three general activities: (1) Preparation of raw material inputs, (2) chemical reactions and synthesis, and (3) recovery of reaction products through purification, isolation, separation, drying, and a variety of other methods, to create a good that can be either sold as a finished material or as an intermediate for further processing by other manufacturers.

The chemical industry is an integral part of the United States' (U.S.) economy, converting various raw materials into more than 70,000 diverse products. These raw material inputs are generally either organic (oil, natural gas) or inorganic raw materials (ores or natural elements taken from the earth).[22] In many instances, these raw material inputs need to undergo chemical or physical processes before they are introduced in the chemical reaction, and these processes tend to be a large source of hazardous substances. For example, in the production of chlorine, raw brine requires the removal of impurities, such as calcium, magnesium, and other trace metals, to obtain the process input sodium chloride.[23] The removal of impurities leads to the formation of brine muds, a large waste stream containing the hazardous substances sulfate, chloride, and carbon tetrachloride.[24]

The next step in chemical and allied products manufacturing process, chemical reaction and/or synthesis, exhibits variety both across and within sectors in the chemical manufacturing industry, although with the common characteristic of using a chemical process to formulate a product. Some examples of chemical reactions include halogenation in the formation of chlorinated solvents, and polymerization in the formation of plastic resins. Inputs will often go through more than one reaction. In many sectors, a reactor vessel acts as a host to the reaction, as well as sometimes acting as a crystallizer, heater, mixer, or evaporator.[25] Chemical synthesis can be responsible for significant emissions of hazardous substances, including ammonia, ethylene, aromatics, alcohols, oxides, acids, and chlorine.[26] In organic chemical manufacturing, inputs are generally added by either a batch process, in which all reactant chemicals are added to a reaction vessel at the same time and the products are emptied completely when the reaction is finished, or by a continuous process, in which reactants are added and products are removed at a constant rate. Chemicals may be emitted more at the beginning and end of the reaction during operations, such as vessel loading and product transfer.[27]

The desired end products are rarely obtained in pure form out of the reaction or synthesis process, and by-products and unreacted inputs must be removed. Once the reaction occurs, the targeted product or products must be isolated and purified, and this

[21] Within NAICS 325 belong the following: Basic Chemical Manufacturing (NAICS 3251); Resin, Synthetic Rubber, and Artificial Synthetic Fibers and Filaments Manufacturing (NAICS 3252); Pesticides, Fertilizer, and Other Agricultural Chemical Manufacturing (NAICS 3253); Pharmaceutical and Medicine Manufacturing (NAICS 3254); Paint, Coating, and Adhesive Manufacturing (NAICS 3255); Soap, Cleaning Compound, and Toilet Preparation Manufacturing (NAICS 3256); and Other Chemical Product and Preparation Manufacturing (NAICS 3259).

[22] U.S. Department of Energy. Office of Industrial Technologies. (2000). ''Energy and Environmental Profile of the U.S. Chemical Industry.'' Columbia, MD: ENERGETICS Inc. Available at: *http://www1.eere.energy.gov/industry/chemicals/tools_profile.html.*

[23] EPA 1995. ''Office of Compliance Sector Notebook: Profile of the Inorganic Chemical Industry.'' EPA/310–R–95–004 SIC Code: 281. Available at: *http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/inorganic.html.*

[24] International Finance Corporation, World Bank Group 2007. ''Environment, Health, and Safety Guidelines: Large Volume Inorganic Compounds Manufacturing and Coal Tar Distillation.'' Available at: *http://www.ifc.org/ifcext/sustainability.nsf/Content/EnvironmentalGuidelines.*

[25] EPA 1997. ''Office of Compliance Sector Notebook: Profile of the Pharmaceutical Industry.'' EPA/310–R–97–005: 283. Available at: *http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/pharmaceutical.html.*

[26] EPA 2002. ''Office of Compliance Sector Notebook: Profile of the Organic Chemical Industry.'' EPA/310–R–02–001 SIC Code: 286. *http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/organic.html.*

[27] Ibid.

purification process will vary based on inputs, processes, and the targeted product. For example, common separation methods used by the organic chemical manufacturing industry include filtration, extraction, or distillation, the latter a method used to separate or purify volatile components from less volatile components. Some environmental concerns associated with distillation include releases to the air from condenser vents, waste streams, and wastes from cleaning.[28] Pharmaceutical manufacturers typically utilize a series of separation, crystallization, purification, and drying stages in formulating a product.[29] These steps can lead to the emission of hazardous substances from uncontained filtering systems and dryers, and wastewaters may be formed from equipment cleaning, spills, leaks, and spent purification solvents. In the production of chlorine and caustic soda, classified under the inorganic chemical manufacturing industry, recovered chlorine gas is processed with sulfuric acid, which may then be released to water or disposed of on the land.[30] Other wastes from the production of chlorine and caustic soda include chlorine gas emissions (both fugitive and point sources); spent acids; Freon (both fugitive and point source); and pollutants originating from electrolytic cell materials and other system parts.[31]

Both because of the way that the facilities covered by this **Federal Register** notice fit together, and because of the range of activities that they cover, EPA believes chemical manufacturing is properly identified as a group and considered to include multiple classes of facilities.

a. Releases and Exposure to Hazardous Substances

The Chemical Manufacturing industry typically operates on a large scale, with releases to the environment and, in some situations, subsequent exposure of humans, organisms, and ecosystems to hazardous substances on a similarly large scale. As was previously discussed, the Agency's TRI data revealed that the Chemical Manufacturing industry released large quantities of CERCLA hazardous substances, approximately 220 million pounds, or approximately 10 percent of the total on-site releases of hazardous substances reported under TRI. This overall percentage, while declining, has still remained large since 2001, ranging from 291 million pounds of total on-site releases of hazardous substances in 2001 to 233 million pounds in 2006. In 2007, the majority of on-site releases of hazardous substances from the Chemical Manufacturing industry were to underground injection, with additional releases to the air, water, and land.[32]

Further, according to the 2007 RCRA BR, the Chemical Manufacturing industry generated approximately 19.8 million tons of hazardous waste, or approximately 61 percent of the total amount of hazardous waste reported by large quantity generators. This waste can take a variety of forms, including spent solvents, distillation bottoms and side-cuts, off specification or unused toxic chemicals, wastewater, wastewater treatment sludge, emission control sludges, filter cake, spent catalysts, by-products, reactor clean out wastes, and container residues.[33]

There are a large number of active facilities operating in the U.S., and thus, there is potential for releases of and exposure to hazardous substances. While estimates of the number of active chemical manufacturing facilities vary, in 2007, the Census Bureau estimated that there were approximately 13,000 chemical manufacturing facilities in the U.S.[34]

In some cases, these wastes have led to ground and surface water contamination when improperly managed.[35] In particular, EPA's review of its NPL site information underscores the risk of chemical manufacturing facilities. To begin with, that review showed over 180 facilities with sites included on the NPL. Pemaco Maywood, a four-acre facility in Maywood, California, that housed a chemical blending plant operating between the 1940s and 1991, is a prominent example of a facility with high risk to the environment and human health. During its years of operation, hazardous chemicals were stored in both above- and below-ground tanks, and drums included chlorinated and aromatic solvents, flammable liquids, petroleum hydrocarbons, and other volatile organic chemicals (VOCs). In a later study of contamination of the site, several VOCs were identified as infiltrating soil and wells drawing from groundwater. Aqueous samples taken from the wells contained toxic hydrocarbons, such as vinyl chloride, trichloroethene (TCE), 1,1,1-trichloroethane (TCA), 1,1- and 1,2-dichloroethenes, and 1,1-dichloroethane, all listed on the 2007 CERCLA Priority List of Hazardous Substances.[36] The site is of particular concern because 13 water purveyors draw groundwater from 78 wells within four miles of the site to supply drinking water to approximately 339,000 people. Furthermore, the site is in a mixed industrial and residential community, with a residential tract across the street.[37] Similarly, the Woolfolk Chemical Superfund site, in Fort Valley, Georgia, a full-line pesticide plant formulating products in liquid, dust, and granular forms for the agricultural, lawn, and garden markets emitted a large amount of chemicals throughout its years of operation. Monitors detected metals and pesticides, including lead, arsenic, chlordane, DDT, lindane, and toxaphene, in on-site soil and groundwater, and in an open ditch south of the plant. Three of the five Fort Valley municipal water supply wells are within 1,000 feet of the facility, and an estimated 10,000 people obtain drinking water from municipal wells within three miles of the site.[38] [39]

[28] Ibid.

[29] EPA 1997. ''Office of Compliance Sector Notebook: Profile of the Pharmaceutical Industry.'' EPA/310–R–97–005: 283. Available at: *http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/pharmaceutical.html.*

[30] EPA 1995. ''Office of Compliance Sector Notebook: Profile of the Inorganic Chemical Industry.'' EPA/310–R–95–004: 281. Available at: *http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/inorganic.html.*

[31] Ibid.

[32] See TRI data from Bill Kline, EPA. ''On-site Releases of ATSDR (Agency for Toxic Substances and Disease Registry) Hazardous Substances Reported to TRI for 2001 through 2007, by Industry and Year,'' October 8, 2009.

[33] European Commission. Integrated Pollution Prevention and Control (IPPC). ''Reference Document on Best Available Techniques in the Large Volume Organic Chemical Industry.'' 2003. European Commission Joint Research Centre. Available at: *http://ftp.jrc.es/eippcb/doc/lvo_bref_0203.pdf.*

[34] American Fact Finder. 325 Chemical Manufacturing. U.S. Census Bureau. 2007 Economic Census. Last Updated: March. Accessed at: *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-ds_name=EC0700CADV1&-NAICS2007=325&-_lang=en* Accessed: September 9, 2009.

[35] See, for example, the NPL Site Narrative for Diaz Chemical Corporation, available at: *http://www.epa.gov/superfund/sites/npl/nar1708.htm*, or the NPL Site Narrative for Standard Chlorine Chemical Company, available at: *http://www.epa.gov/superfund/sites/npl/nar1672.htm.*

[36] ATSDR (Agency for Toxic Substances and Disease Registry). 2007. ''CERCLA Priority List of Hazardous Substances.'' U.S. Department of Health and Human Services. Available at: *http://www.atsdr.cdc.gov/cercla/.* CERCLA Section 104 (i), as amended by the Superfund Amendments and Reauthorization Act (SARA), requires ATSDR and EPA to prepare a list, in order of priority, of substances that are most commonly found at facilities on the NPL and that are determined to pose the most significant potential threat to human health due to their known or suspected toxicity and potential for human exposure at these NPL sites.

[37] EPA 2009. NPL Site Narrative for Pemaco Maywood. Available at: *http://www.epa.gov/superfund/sites/npl/nar1517.htm.*

[38] EPA 2009. NPL Site Narrative for Woolfolk Chemical Works, Inc. Available at: *http://www.epa.gov/superfund/sites/nplsnl/n0401315.pdf.*

b. Severity of Consequences Resulting From Releases and Exposure to Hazardous Substances.

These situations, as well as others, EPA believes, have led to, and may continue to lead to, impacts to public health and the environment as a result of releases and exposure of hazardous substances. Specifically, the severity of consequences posed by some chemical manufacturing facilities is evident in the large costs associated with some past and estimated future actions necessary to protect public health and the environment through what are often extensive and long-term remediation efforts. In other words, the documented expenditures for cleanup reflect efforts to correct the realized risks from chemical manufacturing facilities. As noted earlier, chemical manufacturing facilities release, and have the potential to release, large quantities of hazardous substances, which can affect the environment and populations. Groundwater and soil contamination require long-term management and treatment. Remediation of these chemical manufacturing facilities has therefore been historically costly. For the NPL sites identified in the NAICS 325 category, EPA has spent approximately $2.7 billion through FY 2009.[40] [41] For example, Whitmoyer Laboratories, a veterinary and pharmaceutical manufacturing plant, produced, stored, and disposed of arsenic on its 22-acre site. Over the years, the laboratory changed ownership and in 1964 detectable levels of arsenic were found in the soil, groundwater and surface water. This site was added to the NPL in 1987, and remediation efforts included demolishing the 17 abandoned buildings and the removal of more than 50,000 tons of arsenic-contaminated waste and soils, with a projected cost of $124 million.[42] [43]

Thus, EPA's past experience with some NPL sites leads it to conclude that chemical manufacturing facilities are likely to and continue to present a substantial financial burden that could be met by financial responsibility requirements.

EPA believes that common corporate structures and interrelated corporate failures within the Chemical Manufacturing industry also increase the likelihood of uncontrolled releases of hazardous substances being left unmanaged, increasing risks. In particular, the existence of a parent-subsidiary relationship can present several risks. First, corporate structures may allow parent corporations to shield themselves from liabilities of their subsidiaries.[44] In a 2005 study, the Government Accountability Office (GAO) cited chemical manufacturing as an example of businesses at risk of incurring substantial liability and transferring the most valuable assets to a parent that could not be reached for cleanup.[45]

Second, EPA believes that chemical manufacturing sites tend to change ownership, making the assignment of appropriate responsibility for remediation costs difficult. For instance, a 500–600 acre Brunswick, Georgia site that was most recently owned by LCP Chemicals has a long history of turnover between owners. The site was originally owned and operated by a petroleum refinery from 1919 until 1930, while portions of the site were also owned by a paint manufacturer and an energy provider. Allied Chemical bought the site in the mid-1950s and manufactured caustic soda, chlorine, and hydrochloric acid, until the site was purchased by LCP Chemicals in 1979. Investigation of the area has found on-site contamination of mercury, lead and PCBs. Since being added to the NPL, several different potentially responsibility parties have been identified.[46]

Furthermore, there have been a number of bankruptcies in the Chemical Manufacturing industry that resulted in or will likely require significant Federal responses, such as:

- When the owner/operator of Vertac Chemical Company filed for bankruptcy, it left behind nearly 29,000 drums of chemical waste in Jacksonville, Arkansas. EPA's remediation efforts included the incineration and off-site shipment of these drums, as well as clean-up of contaminated soil and destruction of the remaining industrial structures. These efforts resulted in a cost to EPA of over $127 million and ongoing disputes over legal responsibility.[47]
- Chemical releases from a Delaware chlorinated benzene manufacturing facility that went bankrupt in 2002 have led to contamination of soil, sediment, a groundwater aquifer, and nearby surface water. Cleanup at this site has included the completion of a groundwater barrier and pump-and-treat system and treatment of contaminated soils. As of 2005, EPA estimated that it had incurred about $28 million in cleanup costs, and that the total cost will eventually rise to up to $100 million.[48]

Considering all of this information, EPA concludes that the classes of facilities within the Chemical Manufacturing industry are among those for which EPA should develop, as necessary, a proposed regulation identifying appropriate financial responsibility requirements under CERCLA Section 108(b).

2. Petroleum and Coal Products Manufacturing (NAICS 324)

For purposes of this **Federal Register** notice, EPA has included the following classes of facilities that are encompassed by the NAICS code 324 definition of the ''Petroleum and Coal Products Manufacturing'' industry:

[39] Facility Detail Report for Woolfolk Chemcial Works. Available at: *http://oaspub.epa.gov/enviro/fii_master.fii_retrieve?fac_search=handler_id&fac_value=GAD003269578&fac_search_type=Beginning+With&postal_code=&location_address=&add_search_type=Beginning+With&all_programs=YES&univ_search=0&univA=1&univB=1&LIBS=&procname=&program_search=2&report=1&page_no=1&output_sql_switch=TRUE&database_type=RCRAINFO*Accessed: September 4, 2009.

[40] This number is in constant 2009 dollars, and represents the Office of Superfund Remediation and Technology Innovation's (OSRTI) analysis of end of FY 2009, cumulative, site-specific, agency-wide, direct expenditures of Superfund appropriated and reimbursable resources extracted from the EPA Integrated Financial Management System (IFMS). Expenditure data include all direct costs, including, but not limited to site assessments, remedial, removal, enforcement, and oversight costs. Data do not include indirect costs, costs incurred by private or other parties performing response actions, or future costs to be incurred at these sites and may not be used for cost recovery purposes. See Memorandum from Elaine Eby, EPA, to The Record, Re: ''Superfund Cost Estimates for Selected Classes of Facilities,'' November 30, 2009.

[41] Expenditure data are converted into 2009 constant dollars using GDP deflation factors derived from: Table 10.1—Gross Domestic Product and Deflators Used in the Historical Tables: 1940–2009, from the Budget of the U.S., FY 2005. Online via GPO access.

[42] Congress of the U.S. Congressional Budget Office. A CBO Study. 1994. ''The Total Cost of Cleaning Up Non-Federal Superfund Sites,'' at p. 22. Available at: *http://www.cbo.gov/ftpdocs/48xx/doc4845/EntireReport.pdf.*

[43] EPA. Mid-Atlantic Superfund Site, Whitmore Laboratories, Current Site Information. Accessed at: *http://www.epa.gov/reg3hwmd/npl/PAD003005014.htm.*

[44] *United States* v. *Bestfoods,* 542 U.S. 51, 61(1998).

[45] U.S. Government Accountability Office 2005. ''Environmental Liabilities: EPA Should Do More to Ensure That Liable Parties Meet Their Cleanup Obligations.'' Report to Congressional Requesters. GAO–05–658, pp. 21–24. Accessed at: *http://www.gao.gov/highlights/d05658high.pdf.*

[46] EPA 2009. NPL Site Narrative for LCP Chemicals Georgia. Available at: *http://www.epa.gov/superfund/sites/npl/nar1458.htm.*

[47] EPA 2007. ''Compliance and Enforcement Annual Results: FY2007 Superfund Enforcement.'' Available at: *http://www.epa.gov/compliance/resources/reports/endofyear/eoy2007/2007-sp-superfund.html.*

[48] U.S. Government Accountability Office. 2005. ''Environmental Liabilities: EPA Should Do More to Ensure That Liable Parties Meet Their Cleanup Obligations.'' Washington, DC GAO–05–658, p.37. Available at: *http://www.gao.gov/cgi-bin/getrpt?GAO-05-658.*

facilities that transform crude petroleum and coal into usable products (*e.g.,* gasoline, diesel fuel, asphalt base and coatings, heating oil, kerosene, and liquefied petroleum gas).[49] The dominant process in this industry sector (which we discuss in this notice) is petroleum refining which involves the separation of crude petroleum into component products through such techniques as fractionation, distillation, and/or cracking. (However, this industry sector includes activities, such as the production of coke oven products that are not produced at steel mills, including tar derivatives, ammonia, light oil derivatives, and coke oven gas.) Facilities in this industry sector share common characteristics, and are, thus, being identified as a group. At the same time, facilities included in the class differ, and thus, are properly considered to encompass multiple classes of facilities. The various classes in this **Federal Register** notice's definition of petroleum refining are involved in one or more of three general activities: (1) Fractionation; (2) straight distillation of crude oil; and (3) cracking. Depending on the product sought, any or all of these processes may be used. The operations that comprise this industry sector are all part of a sequential process of converting crude petroleum into marketable petroleum-based products, even though the intermediate and end products may differ.

Both because of the way that the facilities covered by this **Federal Register** notice fit together, and because of the range of activities that they cover, EPA believes petroleum and coal products manufacturing is properly identified as a group and considered to include multiple classes of facilities. Facilities not considered to be part of the Petroleum and Coal Products Manufacturing industry—that is, not part of NAICS 324—include establishments that focus primarily on the further processing of refined petroleum products to produce products, such as petrochemicals. For example, facilities that are exclusively involved with any of the following processes are not considered to be part of NAICS 324—the Petroleum and Coal Products Manufacturing industry:

- Manufacturing paper mats and felts and saturating them with asphalt or tar into rolls and sheets (NAICS code 322121);
- Manufacturing synthetic lubricating oils and greases (NAICS code 325998);[50]
- Recovering natural gas and/or liquid hydrocarbons from oil and gas field gases (NAICS code 21111);
- Manufacturing acyclic and cyclic aromatic hydrocarbons (*i.e.,* petrochemicals) from refined petroleum or liquid hydrocarbons (NAICS code 325110);
- Manufacturing cyclic and acyclic chemicals (except petrochemicals) (NAICS code 32519); and
- Manufacturing coke oven products in steel mills (NAICS code 331111).

a. Releases and Exposure to Hazardous Substances

EPA's research indicates that while the petroleum refining industry has facilities throughout the U.S., it is also geographically concentrated, with the highest number of facilities located in Texas (27 facilities), California (20 facilities), and Louisiana (19 facilities).[51] Releases to the environment have resulted, in some situations, in subsequent exposure of humans, organisms, and ecosystems to hazardous substances on a regional scale.

As was previously discussed, the Agency's TRI data revealed that the Petroleum and Coal Products Manufacturing industry released approximately 46 million pounds of CERCLA hazardous substances, or approximately 2.0 percent of the total on-site releases of hazardous substances by U.S. industry reporting to TRI.[52] This overall percentage has remained relatively stable since 2001, ranging from approximately 41 million pounds of total on-site releases of hazardous substances in 2003 to approximately 47 million pounds in 2006. In 2007, the majority of on-site releases of hazardous substances were to surface water and air, with additional releases to the land and underground injection.[53]

There are a large number of active facilities operating in the U.S., and thus, there is potential for releases of and exposure to hazardous substances. In 2007, the U.S. Census Bureau estimated the number of active petroleum and coal products manufacturing facilities at approximately 2,300. Of this total, there are approximately 190 operating petroleum refining facilities.[54] Currently operating petroleum refining facilities tend to be very large, high-volume facilities. For example, the aggregate output of the 93 U.S. petroleum refineries listed on the Financial Reporting System (FRS)[55] was 14.17 million barrels per calendar day in 2007.[56] Because refineries tend to be operated for decades, there is a long timeframe for potential releases and exposure of hazardous substances to occur. In addition, because of their need for large amounts of cooling water for operations, refineries tend to be located near navigable waterways or on the seashore, which likely increases the potential to impact groundwater, surface water, aquatic biota, and aquatic vegetation. Other impacts to terrestrial vegetation, wetlands, wildlife, soils, air, cultural resources, and humans that use these resources recreationally or for subsistence also are likely.

Facilities in the Petroleum and Coal Products Manufacturing industry also generate significant quantities of hazardous wastes, which may increase the risk of releases of hazardous substances. According to the 2007 RCRA BR, approximately 4.2 million tons of hazardous waste was generated by this industrial sector (second only to the Chemical Manufacturing industry). These wastes, which include primary and secondary sludges, spent catalysts, filter cakes, sour water, heavy ends (distillation bottoms), dissolved air/nitrogen flotation (DAF/DNF), flotation debris, waste soils, oily sludge, tank bottom sludge, clarified slurry oil, and tank bottoms[57] have the potential to result in adverse environmental consequences if released to the environment. Hazardous wastes generated by the Petroleum and Coal Products Manufacturing industry can contain significant concentrations of

[49] Within NAICS 324 belongs the following: Petroleum Refineries (NAICS 32411); Asphalt Paving, Roofing, and Saturated Materials Manufacturing (NAICS 32412); and Other Petroleum and Coal Products Manufacturing (NAICS 32419).

[50] It should be noted, however, that some of these processes fall within classes identified elsewhere in this **Federal Register** notice—in this case, the classes within NAICS 325.

[51] Energy Information Administration. U.S. Department of Energy. ''Refinery Capacity Report 2009.'' Released June 25, 2009. Available at: *http://www.eia.doe.gov/oil_gas/petroleum/data_publications/refinery_capacity_data/refcapacity.html.*

[52] See TRI data from Bill Kline, EPA. ''Onsite Releases of ATSDR Hazardous Substances Reported to TRI for 2001 through 2007, By Industry and Year,'' October 8, 2009.

[53] Ibid.

[54] U.S. Census Bureau, 2009. 2007 Economic Census. Accessed at: *http://factfinder.census.gov/servlet/IBQTable?_bm=y&-ds_name=EC0731I1&-NAICS2007=324110&-ib_type=NAICS2007&-geo_id=&-_industry=324110&-_lang=en.*

[55] FRS is a reporting system operated by the Energy Information Administration (EIA) through which major energy-producing companies based in the U.S. annually report their worldwide financial and operating data on a uniform and standardized basis via Form EIA–28.

[56] EIA Official Statistics from the U.S. Government, 2009. U.S. and Foreign Petroleum Refining Statistics for FRS Companies. Accessed at: *http://tonto.eia.doe.gov/cfapps/frs/frstables.cfm?tableNumber=28&startYear=1998&endYear=2007.*

[57] See ''Wastes Description Generated by Petroleum Refineries (NAICS 3241xx).'' November 4, 2009.

certain toxic chemicals (benzene, arsenic, and polycyclic aromatic hydrocarbons (PAHs)).

In some cases, these wastes have led to ground and surface water contamination when improperly managed. In particular, EPA's analysis of NPL sites shows that 30 currently listed NPL sites have been attributed to petroleum and coal products manufacturing processes; of this total, 22 have been attributed to petroleum refinery operations. Sites contaminated by these processes typically contain a number of different contaminants, including toxic organics, such as benzene, polychlorinated biphenyls, phenol, and VOCs; and heavy metals, such as barium, cadmium, chromium, copper, lead, selenium, and zinc. The Falcon Refinery provides an example of contamination resulting from petroleum refining.[58] The Falcon Refinery site occupies approximately 104 acres in San Patricio County, Texas. The site was proposed to be added to the NPL based on evidence that hazardous substances (including arsenic, barium, chromium, copper, lead, manganese, mercury, nickel, selenium, vanadium, zinc, and PAHs) have migrated or could potentially migrate from the facility to active fisheries and sensitive environments within the adjacent wetlands of Redfish Bay, Aranas Bay, and Corpus Christi Bay.

The Falcon Refinery operated intermittently since 1980, and is currently inactive. When in operation, the refinery operated at a capacity of 40,000 barrels per day with primary products consisting of diesel, fuel oil, jet fuel, kerosene, and naphtha. The Falcon Refinery processed material that consisted of not only crude oil, but also contained RCRA hazardous wastes, including EPA Hazardous Waste Nos. K048 (dissolved air flotation float), K049 (slop oil emulsion solids), K050 (heat exchanger bundle cleaning sludge), and K051 (API separator sludge). Other hazardous wastes at the site include: (1) Vinyl acetate, (2) cooling tower sludges containing chromium, (3) non-crude oil constituents detected in a pipeline spill, (4) untreated wastewater released inside tank berms, and (5) leaking drums.[59]

Another example demonstrating the release of hazardous substances at such facilities is the Tennessee Products site in Chattanooga, Tennessee.[60] The site consists of two distinct source areas of contamination: (1) Certain areas in the flood plain containing uncontrolled coal-tar constituents; and (2) sediments along approximately 2.5 miles of Chattanooga Creek that were contaminated with coal-tar constituents. Contamination in the creek was caused, in part, by a former coal carbonization facility (coke plant). This facility was operated from approximately 1918 until 1987. Various companies operated the facility throughout its history. The Tennessee Products Corporation operated it the longest, from 1926 to 1964. Uncontrolled dumping of coal-tar wastes contaminated the facility, the groundwater underlying the facility, and sediments and surface water in Chattanooga Creek downstream of the facility. These coal-tar wastes contained high levels of various PAHs. Residents from nearby housing projects and homes in this urban area used Chattanooga Creek for swimming, playing, and fishing by both children and adults. After the Tennessee Department of Environment and Conservation issued a health advisory for the Creek in 1983 and a fish consumption advisory in 1992, EPA fenced a section of the Creek to prevent public access. After the site was listed on the NPL in 1995, EPA conducted a removal action that included removal of approximately 25,350 cubic yards of coal-tar and contaminated sediment from the site at a cost of $12 million dollars.[61] From 2005 to 2007, a remedial action excavated approximately 107,000 tons of stabilized sediment from the creek channel and transported it for disposal at an off-site landfill. A protective barrier also was installed over 5,740 linear feet of creek channel to guard against potential recontamination.[62]

In addition to sites that have been listed on the NPL, EPA notes that many petroleum refineries, as part of their operations, have released and may be continuing to release hazardous substances to the environment, including to groundwater.[63] In certain instances, the amount of hydrocarbons released to the groundwater is such that these refineries are actually pumping out the hydrocarbons from the groundwater table, and recovering them back in the refinery,[64] which demonstrates the significant extent to which these materials have been released to the environment.

b. Severity of Consequences Resulting From Releases and Exposure to Hazardous Substances

The severity of the consequences impacting human health and the environment as a result of releases and exposure of hazardous substances at petroleum and coal products manufacturing processes is evident by analyzing a number of factors. Specifically, the severity of consequences posed by this industry sector is evident in the large costs associated with past and estimated future costs necessary to protect public health and the environment through what are often extensive and long-term remediation efforts. In other words, the documented expenditures reflect efforts to correct the realized risks from petroleum and coal products manufacturing facilities. These facilities release hazardous substances, which have, in some instances, resulted in contamination that requires long-term management and treatment. Remediation of these sites, therefore, has been historically costly. For the NPL sites identified as petroleum refineries in the NAICS 324 category, EPA has spent approximately $250 million through FY 2009.[65,66] Thus, EPA's past

[58] EPA. NPL Site Narrative for Falcon Refinery. Available at: *http://www.epa.gov/superfund/sites/npl/nar1667.htm.*

[59] Ibid.

[60] EPA Superfund Update. August 2002. Proposed Plan Fact Sheet for Cleanup of Chattanooga Creek—Tennessee Products Superfund Site, Chattanooga, Hamilton County, Tennessee. Available at: *http://www.epa.gov/region4/waste/npl/npltn/tnprod/chtgcrkppf.pdf.*

[61] Ibid.

[62] EPA. Site Summary for Tennessee Products (Chattanooga Creek). Available at: *http://www.epa.gov/Region4/waste/npl/npltn/tennprtn.htm#progress.*

[63] RCRA Facility Investigations (RFIs) document releases to the environment from regulated units subject to corrective action under Subtitle C of RCRA. These RFIs are used to characterize the nature, extent, and rate of migration of contaminant releases to soils, ground water, subsurface gas, air, and surface water. They also provide guidance to the regulatory agency to determine if interim corrective measures may be necessary. EPA has reviewed RFIs from petroleum refineries and finds that released hydrocarbons are being recovered from the groundwater and recovered and reprocessed into the facilities oil refining process. See, for example, the Closure and Corrective Action Permit of an Oklahoma Refinery, which includes a ''Light Non-Aqueous Phase Liquid (LNAPL) Recovery Plan'' (OKD058078775–PC), and which is available in the docket for this **Federal Register notice.**

[64] Ibid.

[65] This number is in constant 2009 dollars, and represents the Office of Superfund Remediation and Technology Innovation's (OSRTI) analysis of end of FY 2009, cumulative, site-specific, agency-wide, direct expenditures of Superfund appropriated and reimbursable resources extracted from the EPA Integrated Financial Management System (IFMS). Expenditure data include all direct costs, including, but not limited to site assessments, remedial, removal, enforcement, and oversight costs. Data do not include indirect costs, costs incurred by private or other parties performing response actions, or future costs to be incurred at these sites and may not be used for cost recovery purposes. See Memorandum from Elaine Eby, EPA, to The Record, Re: ''Superfund Cost Estimates for Selected Classes of Facilities,'' November 30, 2009.

[66] Expenditure data are converted into 2009 constant dollars using GDP deflation factors derived from: Table 10.1—Gross Domestic Product and Deflators Used in the Historical Tables: 1940–2009,

Continued

experience with these sites leads it to conclude that petroleum and coal products manufacturing facilities may be likely to continue to present a substantial financial burden that could be met by financial responsibility requirements. Examples include:

• The Indian Refinery—Texaco Lawrenceville site, located in Lawrenceville, Illinois, was active as a petroleum refinery from the early 1900s until 1995. The refinery has been inactive since November 1995, and demolition activities began in June 1998. During its operation, the refinery produced many products. A variety of waste products was also generated and disposed of or released on and off-site. Petroleum products and hazardous substances, including an acidic sludge (lube oil acid sludge and lube oil filter cake sludge), PAHs, benzene, toluene, ethyl-benzene, xylene, cadmium, lead, and other metals have been detected in surface waters, soil, and in groundwater on or adjacent to the site. This site is being addressed in two stages—immediate actions and long-term actions, focusing on cleanup of the entire (approximately 900 acre) site. The remedial investigation and feasibility study are still ongoing.[67]

• The Double Eagle Refinery and Fourth Street Abandoned Refinery, located adjacent to each other in Oklahoma County, Oklahoma, were proposed for listing on the NPL in 1988, subsequently remediated, and deleted from the NPL in 2008. The Double Eagle Refinery operated through 1980 and the Fourth Street Refinery ceased operating in the late 1960s or early 1970s. Both facilities collected, stored, and re-refined used oils. The principal hazardous substances found at the 12-acre Double Eagle Refinery site in contaminated soils and sediments were xylene, ethlybenzene, and trichloroethane, and lead was found in contaminated sludge. Principal hazardous substances found at the 27-acre Fourth Street Abandoned Refinery site in contaminated soils and sediments were phenanthrene and naphthalene, and lead and chrysene were found in contaminated sludge. Cleanup costs were estimated at around $31 million, with over $21 million for the Double Eagle Refinery site and over $11 million for the Fourth Street Abandoned Refinery site.[68]

Considering all of this information, EPA concludes that the Petroleum and Coal Products Manufacturing industry (NAICS 324) consists of classes of facilities for which EPA should develop, as necessary, a proposed regulation identifying appropriate financial responsibility requirements under CERCLA Section 108(b).

3. Electric Power Generation, Transmission, and Distribution (NAICS 2211)

For purposes of this **Federal Register** notice, EPA has included the following classes of facilities that are encompassed by the NAICS code 2211 definition of the Electric Power Generation, Transmission and Distribution (NAICS 2211): Facilities primarily engaged in generating, transmitting, and distributing electric power. Establishments in this industry group may perform one or more of the following activities: (1) Generate electric energy; (2) operate transmission systems that convey the electricity from the generation facility to the distribution system; and (3) operate distribution systems that convey electric power received from the generation facility or the transmission system to the final consumer.

Various sources of energy can be converted into electric energy or electricity. The major, or dominant, sources include fossil fuels, uranium, and water. About 72 percent of electric power generation in the U.S., however, comes from fossil fuels (*i.e.,* coal, oil, or gas). Coal and natural gas are currently the dominant fossil fuels used by the industry. The use of coal results in large quantities of solid waste, including coal combustion residuals (CCR).[69]

The majority of the electricity generated in the U.S. is produced by facilities that employ steam turbine systems. The process of generating electricity from steam comprises four parts: A heating subsystem (fuel to produce the steam), a steam subsystem (boiler and steam delivery system), a steam turbine, and a condenser (for condensation of used steam). Heat for the system is usually provided by the combustion of coal, natural gas, or oil. The fuel is pumped into the boiler's furnace. The boilers generate steam in pressurized vessels in small boilers or in water-wall tube systems in modern utility and industrial boilers. High-temperature, high-pressure steam drives turbine blades, which power the generator to produce electricity.[70]

Wastes from the combustion of fossil fuels include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials. Fly ash is lightweight, uncombusted material that is carried out of the boiler with flue gases. The fly ash is captured in the exhaust stack by electrostatic precipitators, fabric filters, mechanical collectors, or scrubbers. Bottom ash is heavier uncombusted material that settles to the bottom of the boiler. Bottom ash does not melt and, therefore, remains in the form of unconsolidated ash. Boiler slag is uncombusted material that settles to the bottom of the boiler. Slag, unlike bottom ash, forms when operating temperatures exceed ash fusion temperature, and remains in a molten state until it is drained from the boiler bottom. Flue gas desulfurization material is produced during the process of removing sulfur oxide gases from the flue gases using wet or dry scrubbers.[71] In addition, non-combustion wastes, such as cooling, process, and storm water containing hazardous substances, such as chlorine and heavy metals are also generated and discharged into surface waters. Burning of fossil fuels also creates air emissions of hazardous substances, such as VOCs, organic hydrocarbons, and metals.[72]

from the Budget of the U.S., FY 2005 Online via GPO access.

[67] EPA. 2009. NPL Fact Sheet for Indian Refinery-Texaco Lawrenceville. Accessed at: *http://www.epa.gov/region5superfund/npl/illinois/ILD042671248.htm;* Public Health Assessment, Indian Refinery—Texaco Lawrenceville (a/k/a. Texaco Incorporated Lawrenceville Refinery) Lawrenceville, Lawrence County, Illinois, CERCLIS No. ILD042671248. Prepared by Illinois Department of Public Health under Cooperative Agreement with the Agency for Toxic Substances and Disease Registry. March 31, 2000. Summary accessed at: *http://www.atsdr.cdc.gov/HAC/pha/indian/ind_p1.html#summary;* and U.S. Department of the Interior U.S. Fish and Wildlife Service, Illinois Department of Natural Resources, and Illinois Environmental Protection Agency, Final Preassessment Screen Determination for the Former Indian Refinery NPL Site, June 27, 2003. Accessed at: *http://www.fws.gov/midwest/LawrencevilleNRDA/documents/PASD.pdf.*

[68] EPA. 2009. NPL Site Status Summary for Double Eagle Refinery. Accessed at: *http://www.epa.gov/region6/6sf/pdffiles/0601029.pdf;* U.S. EPA. 2009. NPL Site Status Summary for Fourth Street Abandoned Refinery. Accessed at: *http://www.epa.gov/earth1r6/6sf/pdffiles/0601297.pdf;* and Final Close Out Report, Fourth Street Abandoned Refinery Superfund Site, EPA Region 6 Superfund Division, March, 2006.

[69] U.S. Department of Energy, Energy Information Administration. ''Electric Power Industry Overview 2007.'' Available at: *www.eia.doe.gov/cneaf/electricity/page/prim2/toc2.html.*

[70] EPA. September 1997. ''Profile of the Fossil Fuel Electric Power Generation Industry.'' Available at: *http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/fossil.html.*

[71] EPA. March 1999. ''Report to Congress: Wastes from the Combustion of Fossil Fuels, Volume 2, Methods, Findings, and Recommendations'' (EPA530–R–99–010). Available at: *http://www.epa.gov/epawaste/nonhaz/industrial/special/fossil/volume_2.pdf.*

[72] EPA. September 1997. ''Profile of the Fossil Fuel Electric Power Generation Industry,'' Available at: *http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/fossil.html.*

a. Releases and Exposure to Hazardous Substances

EPA's research indicates that the Electric Power Generation, Distribution, and Transmission industry operates on a large scale, with releases to the environment (and, in some situations subsequent exposure to humans, organisms, and ecosystems) of hazardous substances on a similarly large scale. As an indication of the scope or scale of this industry, the Electric Power, Generation, Distribution, and Transmission industry reported high levels of on-site releases of hazardous substances to TRI—third in quantity after Hardrock Mining and Chemical Manufacturing. That is, the Agency's 2007 TRI data [73] revealed that the Electric Power Generation, Transmission, and Distribution industry (NAICS 2211) reported 161 million pounds of on-site releases of hazardous substances, or approximately 7.5 percent of the total on-site releases of hazardous substances by U.S. industry reporting to TRI.[74] Of this total, 93.8 percent (or approximately 150 million pounds) was released from fossil fuel electric power generation, primarily to the land, with additional on-site releases to the air and surface water. This overall quantity of on-site releases of hazardous substances has been declining somewhat, ranging from approximately 175 million pounds of total on-site releases of hazardous substances in 2005, to approximately 163 million pounds in 2006.[75] The types of hazardous substances that have been released include hydrogen fluoride; vanadium, zinc, copper, and lead compounds; ammonia; and arsenic, cobalt, barium, and selenium compounds; a number of the hazardous substances that are released or potentially released, including hydrogen fluoride and arsenic, are very toxic.

The industry reported approximately 16,000 tons of RCRA hazardous waste generated in the 2007 RCRA BR. However, coal combustion residuals are a very large industrial waste stream containing arsenic, selenium, mercury, and other toxic metals, and dwarfing the volume of hazardous waste generated in the U.S. In 2007, 131 million tons of CCRs were generated in the U.S., with 75 million tons being disposed of in landfills and surface impoundments, 49.3 million tons being beneficially used, and 6.7 million tons being placed in minefilling operations. These materials, which include fly ash, bottom ash, boiler slag (all composed predominantly of silica and aluminosilicates), and flue gas desulfurization materials (predominantly Ca-SO_x compounds), have the potential to result in adverse environmental consequences if not properly managed.

There are a large number of facilities operating in the U.S., and thus, there is potential for releases of and exposure to hazardous substances. While estimates of the number of active facilities in this class vary, in 2007, the Census Bureau estimated that there were 9,642 such facilities in the U.S., including 1,270 fossil fuel electric power generation facilities.[76]

In some cases, these wastes have led to ground and surface water contamination when improperly managed. In particular, the Agency's assessment of CCRs has documented evidence of proven damages [77] to groundwater or surface water in 27 damage cases involving CCRs—17 to groundwater, and 10 to surface water, including ecological damages in seven of the ten cases.[78] Sixteen of the 17 proven damages to groundwater involved disposal in unlined units (for the remaining unit it is unclear whether a liner was present), which continues to occur. EPA also has identified 40 cases of potential damage [79] to groundwater or surface water.[80] In one recent damage case example, BBBS Sand and Gravel Quarries, in Gambrills, Maryland, a consent order was filed to settle an environmental enforcement action that was taken against the owner of a sand and gravel quarry and the owner of two Maryland coal fired power plants (defendants) that generated the wastes that contaminated the public drinking water wells in the vicinity of the sand and gravel quarry. Beginning in 1995, fly ash and bottom ash from the two power plants were used to fill excavated portions of two sand and gravel quarries. Groundwater samples collected in 2006 and 2007 from residential drinking water wells near the site indicated that, in certain locations, hazardous substances, including heavy metals and sulfates, were present at or above groundwater quality standards. Under the terms of the consent order, the defendants are required to pay a fine, remediate the groundwater in the area, and provide replacement water supplies for 40 properties.

In addition to these cases of proven or potential damage, EPA's analysis of the NPL shows that four sites containing CCRs have been listed on the NPL: (1) Chisman Creek, Virginia; (2) Salem Acres, Massachusetts; (e) Lemberger Landfill, Wisconsin; and (4) U.S. Department of Energy Oakridge Reservation, Tennessee. At these sites, groundwater and surface water contaminated with a variety of hazardous substances, including arsenic, nickel, selenium, sulfate, as well as VOCs, trichloroethylene, vinyl chloride, and methylene chloride, have been documented.

b. Severity of Consequences Resulting From Releases and Exposure to Hazardous Substances

The severity of the consequences impacting public health and the environment as a result of releases and exposure of hazardous substances posed by the Electric Power Generation, Distribution, and Transmission industry is evident in the large costs associated with past and estimated future costs necessary to protect public health and the environment through what are often extensive and long-term remediation efforts. That is, these facilities release hazardous substances which have, in some instances, resulted in contamination that requires long-term management and treatment. Remediation of these sites, therefore,

[73] The analysis for this notice was conducted based on 2007 data. Though more recent data became available before publication of this **Federal Register** notice, the Agency did not repeat its analysis—rather, the Agency plans to include more recent data when it develops the proposed rule.

[74] See TRI data from Bill Kline, EPA. ''On-site Releases of ATSDR Hazardous Substances Reported to TRI for 2001 through 2007, by Industry and Year,'' October 8, 2009.

[75] See TRI data from Bill Kline, EPA. ''Onsite Releases of ATSDR Hazardous Substances Reported to TRI for 2001 through 2007, by Industry and Year,'' October 8, 2009.

[76] U.S. Census Bureau, 2007 Economic Census. Available at: *http://factfinder.census.gov.*

[77] See footnote 19.

[78] The 24 cases identified in EPA's ''Coal Combustion Waste Damage Case Assessments,'' July 9, 2007, available at: *http://www.regulations.gov/fdmspublic/component/main?main=Document-Detail&d=EPA-HQ-RCRA-2006-0796-0015;* with the addition of Martins Creek, Pennsylvania, where in August 2005, a dam confining a 40-acre CCR surface impoundment failed, resulting in the discharge of 100 million gallons of coal ash and contaminant water. Gambrills, MD; and Kingston/TVA, TN.

[79] Per the May 2000 Regulatory Determination (see 65 FR 32224), potential damage cases are those with (i) documented exceedances of primary MCLs or other health-based standards only directly beneath or in very close proximity to the waste source, and/or (ii) documented exceedances of secondary MCLs or other non-health-based standards on-site or off-site.

[80] The 39 cases of potential damages from CCR identified in EPA's ''Coal Combustion Waste Damage Case Assessments,'' July 9, 2007 are available at: *http://www.regulations.gov/fdmspublic/component/main?main=Document-Detail&d=EPA-HQ-RCRA-2006-0796-0015;* excluding the four damage cases from oil combustion wastes, but including Battlefield Golf Course, Chesapeake, Virginia. This site is a 216-acre site contoured with 1.5 million tons of fly ash as fill material (considered a beneficial use under Virginia's Administrative Code, without a liner, as long as the fly ash was placed at least two feet above groundwater and covered by an 18-inch soil cap).

has been quite costly. For example, the costs to clean up the damage from the recent catastrophic release in Tennessee of over one billion gallons of coal ash from the Tennessee Valley Authority's Kingston Plant has been estimated to range from $933 million to $1.2 billion.[81] In addition, for the Chisman Creek NPL site, EPA has spent approximately $1.4 million through September 2009.[82] [83]

Considering all of this information, and considering that many facilities within the Electric Power Generation, Distribution and Transmission industry generate coal combustion residuals, EPA believes that this industry consists of classes of facilities for which EPA should develop, as necessary, a proposed regulation identifying appropriate financial responsibility requirements under CERCLA Section 108(b).

E. Additional Classes of Facilities Requiring Further Study

As mentioned previously in this notice, EPA has identified classes of facilities within four industry sectors—the Waste Management and Remediation Services industry (NAICS 562); the Wood Product Manufacturing industry (NAICS 321); the Fabricated Metal Product Manufacturing industry (NAICS 332); and the Electronics and Electrical Equipment Manufacturing industry (NAICS 334 and 335)—as well as facilities engaged in the recycling of materials containing CERCLA hazardous substances as those for which the Agency plans to conduct further in-depth study before deciding whether to begin the regulatory development process. The classes of facilities within these industry sectors comprise a large portion of the sites on the NPL (see Table 1), and ranked high, in some cases, in the Agency's analyses of the BR and TRI data (see Tables 2 and 3). However, for the reasons described below, EPA is not prepared at this time to identify these classes of facilities as those for which the Agency will begin the regulatory development process. The Agency believes that a more robust analysis of the NPL information, and review of data from State cleanup and other types of remediation programs (*e.g.,* EPA's Brownfields program), as well as any other relevant data, should first be conducted.

1. Waste Management and Remediation Services (NAICS 562) and Facilities Engaged in the Recycling of Materials Containing CERCLA Hazardous Substances

The Waste Management and Remediation Services industry ranked highest in the Agency's NPL analysis (with 465 sites), and ranked high on both the BR and TRI analyses (see Tables 1, 2 and 3). This would appear, at first glance, to indicate that the classes of facilities within this industry sector should also be considered for development of proposed regulations. However, because of the way that this category is tracked by the Superfund program (see footnote 14), the industrial categories that fall within it are not as clearly delineated as was the case for some of the other sectors and, as a result, the data analyzed for purposes of this notice provided only a limited categorization of the types of facilities that are included in this category.

Likewise, facilities that recycle materials containing CERCLA hazardous substances presented a similar situation. As classified on the NPL, this sector includes an assortment of operations, which EPA is not currently prepared to characterize.

Therefore, before EPA decides to develop a financial responsibility regulation under CERCLA Section 108(b), we believe more information is needed regarding the types of facilities included in these categories, and the risks that they might present. Thus, the Agency is identifying these sectors as among those it plans to further evaluate regarding financial responsibility requirements under CERCLA Section 108(b).

2. Wood Product Manufacturing (NAICS 321), Fabricated Metal Product Manufacturing (NAICS 332), and Electronics and Electrical Equipment Manufacturing (NAICS 334 and 335)

The three remaining industry sectors identified in the NPL analysis—the Wood Product Manufacturing industry, the Fabricated Metal Product Manufacturing industry, and the Electronics and Electrical Equipment Manufacturing industry—are among the industry sectors that have undergone significant structural or operational changes in recent years. For example, regulatory changes have affected the types of chemical substances used to treat wood and the process operations at wood preserving sites.[84] In the case of each of these three sectors, EPA believes it is necessary to further investigate the extent to which these changes have affected the risks that each of these sectors present. Thus, the Agency is identifying these sectors as among those it plans to further evaluate regarding financial responsibility requirements under CERCLA Section 108(b).

III. Request for Public Comment

Consistent with the Agency's approach in the July 2009 notice, EPA is not requesting comment in this **Federal Register** notice on its methodology for determining that the Chemical Manufacturing industry, the Petroleum and Coal Products Manufacturing industry, and the Electrical Power and Generation, Transmission, and Distribution industry represent classes of facilities for which EPA plans to develop, as necessary, a proposed regulation identifying appropriate financial responsibility requirements under CERCLA Section 108(b). The Agency is, however, interested in receiving comments on several issues.

With respect to the classes within those industries—the Chemical Manufacturing industry, the Petroleum and Coal Products Manufacturing industry, and the Electrical Power and Generation, Transmission, and Distribution industry—the Agency requests information on whether EPA should develop a proposed regulation under CERCLA Section 108(b) for any class or classes, or for the industry as a whole, including information demonstrating why such financial responsibility requirements would not be appropriate for those particular class(es).

The Agency also requests the following information (for any or all of

[81] See ''TVA Reports 2009 Fiscal Year Third Quarter Results.'' Available at: *http://www.tva.gov/news/releases/julsep09/3rd_quarter.htm.*

[82] This number is in constant 2009 dollars, and represents the Office of Superfund Remediation and Technology Innovation's (OSRTI) analysis of end of FY 2009, cumulative, site-specific, agency-wide, direct expenditures of Superfund appropriated and reimbursable resources extracted from the EPA Integrated Financial Management System (IFMS). Expenditure data include all direct costs, including, but not limited to site assessments, remedial, removal, enforcement, and oversight costs. Data do not include indirect costs, costs incurred by private or other parties performing response actions, or future costs to be incurred at these sites and may not be used for cost recovery purposes. See Memorandum from Elaine Eby, EPA, to The Record, Re: ''Superfund Cost Estimates for Selected Classes of Facilities,'' November 30, 2009.

[83] Expenditure data are converted into 2009 constant dollars using GDP deflation factors derived from: Table 10.1—Gross Domestic Product and Deflators Used in the Historical Tables: 1940–2009, from the Budget of the U.S., FY 2005. Online via GPO access.

[84] EPA. September 1995. ''Profile of the Lumber and Wood Products Industry.'' Office of Enforcement and Compliance Assurance, EPA 310–R–95–006. Available at: *http://www.epa.gov/compliance/resources/publications/assistance/sectors/notebooks/lmbrwdsn.pdf;* and EPA. April 17, 1996. ''Final Best Demonstrated Available Technology (BDAT) Background Document for Wood Preserving Wastes FO32, FO34, and FO35.'' Available at: *http://www.epa.gov/waste/hazard/tsd/ldr/wood/bdat_bd.pdf,* and EPA. October 2001. ''RCRA, Superfund & EPCRA Call Center Training Module.'' Available at: *http://www.epa.gov/waste/inforesources/pubs/hotline/training/drip.pdf.*

the industry categories discussed in this notice), which could inform its future actions:

- Data on facility operations within these industries, and on the classes within these industries.
- Data on the risk profile for facilities in the various industries, including data addressing the scope of past and expected future environmental responses.
- Data on the risk evaluation approaches used by various industries (or by industry insurers) when seeking (or providing) insurance or bonding coverage.
- Data explaining how frequently various financial assurance mechanisms are used by the various sectors, and the factors causing some to be chosen over others.
- Information demonstrating the extent to which facilities within the industry categories are currently subject to financial responsibility provisions under other federal or state requirements, and the manner in which these requirements are posed.
- Information about existing Federal, State, Tribal, and local environmental requirements for the various industries, and how these might affect the environmental risks posed.
- Information about financial responsibility instruments, particularly, information on the type and duration of financial instruments currently used to demonstrate financial responsibility, and on the default rates of those instruments.
- Information EPA may consider in setting levels of financial responsibility under CERCLA 108(b) on the payment experience, including voluntary settlements, of:
  - commercial insurance,
  - surety bond industries, and
  - State cleanup programs and their participants.

For purposes of developing any proposed regulations, EPA expects that it will be most useful to receive payment amounts on a site-specific basis (including site locations, facility type, and usage), the basis on which these payments were calculated (including the specific types of incidents and circumstances), and the types of liabilities for which the payments were made.

- Information and advice from the insurance and surety industries, and from their regulators and customers, on how they think they can best inform EPA as it pursues the regulatory development process. For example:
  - Are there particular companies, associations, producers, policyholders, or regulators EPA should contact in the development of these requirements?
- What policy or other contractual terms should EPA consider specifying, and how will these support a sound financial responsibility program under CERCLA 108(b)?
- What are the maximum amounts of coverage that insurers or sureties offer for the various classes noted above, how have these varied over time, and what caused the variations?
- Information on the reliability, availability, and affordability of existing financial responsibility mechanisms. For example:
- What has been the experience of environmental financial assurance program regulators who have attempted to access funds or compel performance assured by insurance, guarantees, surety bonds, letters of credit and self insurance?
- What data have shown some of these mechanisms to be more effective than others?
- If there were payment delays, what caused them?
- If the payment of funds or desired performance did not occur, what factors contributed to this?
- For regulators who do not accept self insurance, what experience or other information supports your reasons?
- For regulators who do accept self insurance, what criteria (such as financial test ratios, and please be specific), ratings, or other criteria have been most effective in terms of striking an appropriate balance between allowing companies to use self-insurance when they can fulfill their obligations, and disallowing those that later could not or would not meet their obligations?
- Can regulators provide data on specific sites that show that guarantees, or other instruments, have been difficult to enforce or are otherwise problematic?
- Are there particular regulatory requirements that may affect (either by increasing or decreasing) the numbers and types of issuers, *e.g.* banks or insurers, that would be willing to offer coverage under CERCLA 108(b)?
- What factors, including those that may be beyond the Agency's control, affect the availability of mechanisms and how do these factors operate?
- What information should the Agency consider in assessing incremental, annual increases in the requirements?
- Are there specific qualifications or other requirements for issuers that are necessary to ensure the payment of funds when needed? If so, how, if at all, would these qualifications affect the availability of coverage?
- For the various mechanisms, how are prices, for example, collateral requirements and fees, or insurance premiums, determined, and what information should EPA use to assess the costs of such coverage?
- What factors or information are used by issuers to determine the amounts of coverage provided?
- How do issuers determine what types of costs should be covered or excluded?
- How are fees or coverage amounts adjusted to account for risk information, such as from risk assessments, site-specific exemptions, or positive risk management incentives?
- Are there particular environmental financial responsibility programs that EPA should look to as models in the design and implementation of CERCLA 108(b). If so, what factors lead to their effectiveness or efficiency, and what independent assessments support these conclusions?
- Alternatively, are there examples of practices that EPA should seek to avoid and what documentation supports these conclusions?

As EPA evaluates the classes within the groups identified in this notice, in the course of developing a proposed regulation, or in the course of deciding whether to develop a proposed regulation, the Agency will consider information it receives on these issues.

IV. Conclusion

In today's notice, EPA has identified classes of facilities within (1) the Chemical Manufacturing industry (NAICS 325), (2) the Petroleum and Coal Products Manufacturing industry (NAICS 324), and (3) the Electric Power Generation, Transmission, and Distribution industry (NAICS 2211), as those for which EPA plans to develop, as necessary, a proposed regulation identifying appropriate financial responsibility requirements under CERCLA Section 108(b). EPA will carefully examine specific activities, practices, and processes involving hazardous substances at these facilities, as well as Federal and State authorities, policies, and practices to determine the risks posed by these classes of facilities and whether requirements under CERLCA Section 108(b) will effectively reduce these risks. Any financial responsibility regulations developed by the Agency as the result of its analysis will be proposed in the **Federal Register** for public notice and comment.

In addition, the Agency has identified classes of facilities within: (1) The Waste Management and Remediation Services industry (NAICS 562), (2) facilities engaged in the recycling of

materials containing CERCLA hazardous substances, (3) the Wood Product Manufacturing industry (NAICS 321), (4) the Fabricated Metal Product Manufacturing industry (NAICS 332), and (5) the Electronics and Electrical Equipment Manufacturing industry (NAICS 334 and 335), as classes of facilities that require further study before EPA begins development of a proposed regulation under CERCLA Section 108(b). Once the in-depth analysis is complete, the Agency will decide whether to begin development of a proposed regulation for these classes of facilities.[85]

Dated: December 30, 2009.

Lisa P. Jackson,

Administrator.

[FR Doc. E9–31399 Filed 1–5–10; 8:45 am]

BILLING CODE 6560–50–P

[85] As part of developing proposed and final rules, the Agency will consider whether facilities within the classes identified in this notice that have RCRA permits or are subject to interim status requirements under RCRA, and already are subject to RCRA financial assurance and facility-wide corrective action requirements, also need to be subject to financial responsibility requirements under CERCLA Section 108(b). In addition, EPA is aware, and will consider in its development of proposed and final rules, that some facilities within the classes identified in this notice may be subject to other financial responsibility requirements.

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; Foreign Participation in Acquisitions in Support of Operations in Afghanistan (DFARS Case 2009–D012)

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comment.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement: Waiver of the section 302(a) of the Trade Agreements Act of 1979, as amended, which prohibits acquisitions of products or services from non-designated countries, in order to allow acquisition from the nine South Caucasus/Central and South Asian (SC/CASA) states; and Determination of inapplicability of the Balance of Payments Program evaluation factor to offers of products (other than arms, ammunition, or war materials) from the SC/CASA states to support operations in Afghanistan.

DATES: Comment date: Comments on the proposed rule should be submitted in writing to the address shown below on or before March 9, 2009 to be considered in the formulation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009–D012, using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*

Follow the instructions for submitting comments.

- *E-mail: dfars@osd.mil.* Include DFARS Case 2009–D012 in the subject line of the message.
- *Fax:* (703) 602–7887.
- Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

On July 9, 2009, the Deputy Secretary of Defense issued a waiver of the procurement prohibition of Section 302(a) of the Trade Agreements Act of 1979 with regard to acquisitions by the Department of Defense or by the General Services Administration, on behalf of DoD, in support of operations in Afghanistan. This waiver applies to offers of products and services from the following nine South Caucasus/Central and South Asian (SC/CASA) states: Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan. This waiver was authorized by the United States Trade Representative by letter of June 2, 2009.

In addition, the Deputy Secretary of Defense also made a determination that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program to offers of products (other than arms, ammunition, or war materials) and construction materials from these SC/CASA states acquired in direct support of operations in Afghanistan. For purposes of this rule, the term ''products other than arms, ammunition, or war materials'' equates to the products listed at DFARS 225.401–70.

The draft proposed rule adds a new section 225.7704 to Subpart 225.77, Acquisitions in Support of Operations in Iraq or Afghanistan, to specifically address the two determinations by the Deputy Secretary of Defense relating to acquisitions in support of operations in Afghanistan.

More specifically, in order to implement the waiver of the Trade Agreements Act of 1979 prohibition on acquisitions of products or services from non-designated countries, the proposed rule—

- Adds in the subpart on Trade Agreements (225.401 and 225.403) cross references to 225.7704–1;
- Adds alternates to the trade agreements provision and clause (252.225–7020 and –7021, with conforming changes to the provision and clause prescriptions at 225.1101 paragraphs (5) and (6)); and
- Adds a requirement to the clauses at 252.225–7021 and 252.225–7045 that the contractor shall inform its government of its participation in the acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

In order to implement the determination of the inapplicability of the Balance of Payments Program to end products and construction material from the SC/CASA states, the proposed rule—

- Modifies Subpart 225.5, to provide that whenever the acquisition is in support of operations in Afghanistan, offers of end products (other than arms, ammunition, and war materials) from SC/CASA states shall be treated the same as qualifying country offers;
- Modifies Subpart 225.75, Balance of Payments Program, to provide exceptions in 225.7501(b)(1)(iii) and (b)(2), with cross references to 225.7704–2;
- Adds alternates to the Balance of Payments Program provisions and clauses at 252.225–7000, –7001, –7035, –7036–7044, and –7045, with conforming changes to the provision and clause prescriptions at 225.1101 paragraphs (1), (2), (10), and (11) and 225.7503.

Other changes:

- Definitions of ''South Caucasus/Central and South Asian (SC/CASA) state,'' SC/CASA state construction material, and ''SC/CASA state end product'' have been added at 225.003, because these terms are used in more than one subpart.
- Conforming change were made to the clause dates in 252.212–7001.
- A correction is made to Alternate I of 252.225–7035 to delete the phrase

''Australian or'' from paragraph (c)(2)(i). It was overlooked when the Free Trade Agreement with Australia was added that Alternate I also required revision (when only trade agreement with Canada is applicable).

• A correction is made to the paragraph number of Canadian end product of Alternate I 252.225–7036 to conform to changes to the paragraph number of ''Free Trade Agreement end product'' in the basic clause of 252.225–7036.

• A correction is made to Alternate I of 252.225–7045, to add in paragraph (b), line 4, that the Bahrain Free Trade Agreement does not apply.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because this rule only impacts acquisition that are in support of operations in Afghanistan. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties on this issue. DoD also will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2009–D012.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the rule proposes to modify information collection requirements that have been approved by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* However, the impact on existing approved information collection requirements is expected to be negligible.

In addition, this proposed rule contains a new information collection requirement that requires approval by the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* DoD invites comments on the following aspects of the proposed rule: (a) Whether the collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The following is a summary of the information collection requirement.

Title: Defense Federal Acquisition Regulation Supplement (DFARS); Foreign Participation in Acquisitions in Support of Operations in Afghanistan.

Type of Request: New collection.

Number of Respondents: 100.

Responses per Respondent: 1.

Annual Responses: 100.

Average Burden per Response: .25 hours.

Annual Burden Hours: 25.

Needs and Uses: DoD needs the contractors from South Caucasus/Central and South Asian states to inform their governments regarding their participation in DoD acquisitions and also to advise their governments that they generally will not have such opportunities in the future unless their governments provide reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services. This is necessary to comply with a condition of the waiver authority provided by the United States Trade Representative to the Secretary of Defense.

Affected Public: Businesses or other for-profit institutions.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency: On occasion.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Amy G. Williams,

Editor, Defense Acquisition Regulations System.

Therefore, DoD proposes amending 48 CFR parts 225 and 252 as set forth below:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

225.003 [Amended]

2. Amend section 225.003 by:

a. Redesignating existing paragraphs (12) and (13) as paragraph (15) and (16); and

b. Adding new paragraphs (12), (13), and (14), and

3. Amend section 225.401 by:

a. Redesignating paragraphs (a)(2) introductory text and (a)(2)(A), (a)(2)(B), and (a)(2)(C) as paragraphs (a)(2)(A) introductory text and paragraphs (a)(2)(A)(*1*), (a)(2)(A)(*2*), and (a)(2)(A)(*3*), respectively; and

b. Adding paragraph (a)(2)(B) to read as follows:

225.401 Exceptions.

(a) * * *

(2) * * *

(B) Public interest exceptions for certain countries when acquiring products or services in support of operations in Afghanistan are in 225.7704–1.

* * * * *

4. Amend section 225.403 by adding paragraph (c)(iii) to read as follows:

225.403 World Trade Organization Government Procurement Agreement and Free Trade Agreements.

(c) * * *

(iii) The acquisition is in support of operations in Afghanistan (see 225.7704–1).

5. Amend section 225.502 by adding introductory text to read as follows:

225.502 Application.

Whenever the acquisition is in support of operations in Afghanistan, treat the offers of end products listed in 225.401–70 from South Caucasus or Central and South Asian states the same as qualifying country offers.

* * * * *

6. Amend section 225.1101 by:

a. Redesignating paragraph (1) as paragraph (1)(i);

b. Adding paragraph (1)(ii);

c. Redesignating existing paragraphs (2) introductory text, (2)(i), (2)(ii), (2)(iii), (2)(iv) introductory text, (2)(iv)(A), (2)(iv)(B), and (2)(v) as paragraph (2)(i) introductory text, (2)(i)(A), (2)(i)(B), (2)(i)(C), (2)(i)(D) introductory text, (2)(i)(D)(*1*) and (2)(i)(D)(*2*), and (2)(i)(E) respectively;

d. Adding paragraph (2)(ii);

e. Redesignating paragraph (5) as paragraph (5)(i);

f. Adding paragraph (5)(ii);

e. Redesignating paragraph (6)(iii) as (6)(iv);

f. Adding paragraph (6)(iii);

g. Redesignating paragraph (10) as paragraph (10)(i);

h. Adding paragraphs (10)(ii), (10)(iii), and (10)(iv); and

i. Revising paragraphs (11)(i)(A) and (11)(i)(B) to read as follows:

225.1101 Acquisition of supplies.

(1) * * *

(ii) Use the provision with its Alternate I when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

* * * * *

(ii) Use the clause with its Alternate I when the acquisition is of end products listed in 225.401–70 in support of operations in Afghanistan.

* * * * *

(5) * * *

(ii) Use the provision with its Alternate I when the acquisition is of end products in support of operations in Afghanistan.

(6) * * *

(iii) Use the clause with its Alternate II when the acquisition is of end products in support of operations in Afghanistan and Alternate I is not applicable.

* * * * *

(10) * * *

(iii) Use the provision with its alternate II when the clause at 252.225–7036 is used with its Alternate II.

(iv) Use the provision with its Alternate III when the clause at 252.225–7036 is used with its Alternate III.

(11)(i) * * *

(A) Use the basic clause when the estimated value equals or exceeds $67,826 except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate II.

(B) Use the clause with its Alternate I when the estimated value equals or exceeds $25,000 but is less than $67,826 except if the acquisition is of end products in support of operations in Afghanistan, use with its Alternate III.

* * * * *

7. Amend Section 225.7501 by:

a. Redesignating existing paragraph (b)(1)(iii) as paragraph (b)(1)(iv);

b. Adding paragraph (b)(1)(iii); and

c. Revising paragraph (b)(2) to read as follows:

225.7501 Policy.

* * * * *

(b) * * *

(1) * * *

(iii), If the acquisition is in support of operations in Afghanistan, a South Caucasus/Central and South Asian state end product listed in 225.401–70 (see 225.7704–2); or

* * * * *

(2) The construction material is an eligible product or, if the acquisition is in support of operations in Afghanistan, the construction material is a South Caucasus/Central and South Asian state construction material (see 225.7704–2); or

* * * * *

8. Amend section 225.7503 by:

a. Redesignating paragraph (a) as paragraph (a)(1);

b. Adding paragraph (a)(2);

c. Revising paragraph (b) to read as follows:

225.7503 Contract clauses.

* * * * *

(a) * * *

(2) Use the clause with its Alternate I if the acquisition is in support of operations in Afghanistan.

(b)(1) Use the clause at 252.225–7045, Balance of Payments Program—Construction Material Under Trade Agreements, in solicitations and contracts for construction to be performed outside the United States with a value of $7,443,000 or more, except as provided in paragraph (b)(4) of this section.

(2) For acquisitions with a value of $7,443,000 or more, but less than $8,817,449, use the clause with its Alternate I unless the acquisition is in support of operations in Afghanistan, use the clause with its Alternate III.

(3) If the acquisition is for construction with a value of more than $8,817,449 or more and is in support of operations in Afghanistan, use the clause with its Alternate II.

(4) If the acquisition is for construction with a value of $7,443,000 or more, but less than $8,817,449, and is in support of operations in Afghanistan, use the clause with its Alternate III.

9. Revise section 225.7700 to read as follows:

225.7700 Scope.

(a) Section 886 and Section 892 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181); and

(b) The determinations by the Deputy Secretary of Defense regarding participation of the countries of the South Caucasus or Central and South Asia in acquisition in support of operations in Afghanistan.

10. Add sections 225.7704, 225.7704–1, 225.7704–2, and 225.7704–3 to read as follows:

225.7704 Acquisitions of products and services from South Caucasus/Central and South Asian (SC/CASA) state in support of operations in Afghanistan.

225.7704–1 Applicability of trade agreements.

As authorized by the United States Trade Representative, the Secretary of Defense has waived the prohibition in section 302(a) of the Trade Agreements Act (see Subpart 225.4) for acquisitions by DoD, and by GSA on behalf of DoD, of products and services from SC/CASA states in direct support of operations in Afghanistan.

225.7704–2 Applicability of balance of payments program.

The Deputy Secretary of Defense has determined, because of importance to national security, that it would be inconsistent with the public interest to apply the provisions of the Balance of Payments Program (see Subpart 225.75) to offers of end products other than arms, ammunition, and war materials (i.e., end products listed in 225.401–70) and construction materials from the SC/CASA states that are being acquired by or on behalf of the DoD in direct support of operations in Afghanistan.

225.7704–3 Solicitation provisions and contract clauses.

Appropriate solicitation provisions and contract clauses are prescribed as alternates to the Buy American-Trade Agreements-Balance of Payments Programs solicitation provisions and contract clauses prescribed at 225.1101 and 225.7503.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

11. Amend section 252.212–7001 by:

a. Revising the clause date;

b. Redesignating paragraph (b)(5) as paragraph (b)(5)(i);

c. Adding paragraph (b)(5)(ii);

d. Redesignating paragraph (b)(10) as paragraph (b)(10)(i);

e. Revising new paragraph (b)(10)(i); and

f. Adding paragraphs (b)(10)(ii), (b)(12)(iii), and (b)(12)(iv) to read as follows:

252.212–7001 Contract Terms and Conditions Required To Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items (Date)

* * * * *

(b) * * *

(5)(i)____ 252.225–7001, Buy American Act and Balance of Payments Program (JAN 2009) (41 U.S.C. 10a–10d, E.O. 10582).

(ii) ____ Alternate I (DATE) of 252.225–7001.

* * * * *

(10)(i) ____ 252.225–7021, Trade Agreements (DATE) (19 U.S.C. 2501–2518 and 19 U.S.C. 3301 note).

(ii)____ Alternate I (DATE) of 252.225–7021.

* * * * *

(12)(i) ____ 252.225–7036, Buy American Act—Free Trade Agreements—Balance of Payments Program (MAR 2007) (41 U.S.C. 10a–10d and 19 U.S.C. 3301 note).

(ii) ____ Alternate I (DATE) of 252.225–7036.

(iii) ____ Alternate II (DATE) of 252.225–7036.

(iv) ____ Alternate I II (DATE) of 252.225–7036.

* * * * *

12. Amend section 252.225–7000 by revising the introductory text and adding Alternate I at the end of the section to read as follows:

252.225–7000 Buy American Act—Balance of Payments Program Certificate.

As prescribed in 225.1101(1)(i), use the following provision:

* * * * *

Alternate I (Date)

As prescribed in 225.1101(1)(ii), add the terms ''South Caucasus/Central and South Asian (SC/CASA) state'' and ''SC/CASA state end product'' in paragraph (a) and replace the phrase ''qualifying country end products'' in paragraphs (b)(2) and (c)(2) with the phrase ''qualifying country end products or SC/CASA state end products.''

13. Amend section 252.225–7001 by revising the introductory text and adding Alternate I at the end of the section to read as follows:

252.225–7001 Buy American Act and Balance of Payments Program.

As prescribed in 225.1101(2)(i), use the following clause:

* * * * *

Alternate I (Date)

As prescribed in 225.1101(2)(ii), add the following definitions to paragraph (a) and substitute the following paragraphs (b) and (c) for paragraphs (b) and (c) of the basic clause:

(a)(10) ''South Caucasus/Central and South Asian (SC/CASA) state'' means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(11) ''SC/CASA state end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(b) This clause implements the Balance of Payments Program. Unless otherwise specified, this clause applies to all line items in the contract.

(c) The Contractor shall deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product or an SC/CASA state end product, the Contractor shall deliver a qualifying country end product an SC/CASA state end product, or, at the Contractor's option, a domestic end product.

* * * * *

14. Amend section 252.225–7020 by revising the introductory text and adding Alternate I at the end of the section to read as follows:

252.225–7020 Trade Agreements Certificate.

As prescribed in 225.1101(5)(i), use the following provision:

* * * * *

Alternate I (Date)

As prescribed in 225.1101(5)(ii), substitute the following paragraphs (a), (b)(2) and (c) for paragraph (a), (b)(2) and (c) of the basic clause:

(a) *Definitions.* ''Designated country end product,'' ''nondesignated country end product,'' ''qualifying country end product,'' ''South Caucasus/Central and South Asian (SC/CASA) state,'' ''SC/CASA state end product,'' and ''U.S.-made end product'' have the meanings given in the Trade Agreements clause of this solicitation.

(b)(2) Will consider only offers of end products that are U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(c) *Certification and identification of country of origin.*

(1) For all line items subject to the Trade Agreements clause of this solicitation, the offeror certifies that each end product to be delivered under this contract, except those listed in paragraph (c)(2)(ii) of this provision, is a U.S.-made, qualifying country, SC/CASA state, or designated country end product.

(2)(i) The following supplies are SC/CASA state end products:

(Line Item Number)

(Country of Origin)

_____

(ii) The following are other nondesignated country end products:

(Line Item Number)

(Country of Origin)

15. Amend section 252.225–7021 by revising the introductory text and adding Alternate I at the end of the section to read as follows:

252.225–7021 Trade Agreements.

As prescribed in 225.1101(6)(i), use the following clause:

* * * * *

Alternate I (Date)

As prescribed in 225.1101(5)(iii), add the following new definitions to paragraph (a), substitute the following paragraph (c) for paragraph (c) of the basic clause, and add the following paragraph (d):

(a)(14) ''South Caucasus/Central and South Asian (SC/CASA) state'' means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) ''SC/CASA state end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was

transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only U.S.-made, qualifying country, SC/CASA state, or designated country end products unless—

(1) In its offer, the Contractor specified delivery of other nondesignated country end products in the Trade Agreements Certificate provision of the solicitation; and

(2)(i) Offers of U.S.-made, qualifying country, SC/CASA state, or designated country end products from responsive, responsible offerors are either not received or are insufficient to fill the Government's requirements; or

(ii) A national interest waiver has been granted. (d) The contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

16. Amend section 252.225–7035 by revising the introductory text; revising Alternate I; and adding Alternate II and Alternate III at the end of the section to read as follows:

252.225–7035 Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate.

As prescribed in 225.1101(10)(i), use the following provision:

* * * * *

Alternate I (Date)

As prescribed in 225.1101(10)(ii), substitute the phrase ''Canadian end product'' for the phrases ''Bahrainian end product,'' ''Free Trade Agreement country,'' ''Free Trade Agreement country end product,'' and ''Moroccan end product'' in paragraph (a) of the basic provision; and substitute the phrase ''Canadian end products'' for the phrase ''Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products'' in paragraphs (b)(2) and (c)(2)(ii) of the basic provision, and delete the phrase ''Australian or'' from paragraph (c)(2)(i) of the basic provision.

Alternate II (Date)

As prescribed in 225.1101(10)(iii), add the terms ''South Caucasus/Central and South Asian (SC/CASA) state'' and ''SC/CASA state end product'' in paragraph (a) and substitute the following paragraphs (b)(2) and (c)(2)(i) for paragraphs (b)(2) and (c)(2)(i) of the basic clause

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Australian or Canadian) or SC/CASA state end products:

(Line Item Number)

(Country of Origin)

_____

Alternate III (Date)

As prescribed in 225.1101(10)(iv), substitute the following paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) for paragraphs (a), (b)(2), (c)(2)(i), and (c)(2)(ii) of the basic clause:

(a) *Definitions.* ''Canadian end product,'' ''commercially available off-the-shelf (COTS) item,'' ''domestic end product,'' ''foreign end product,'' ''qualifying country end product,'' ''SC/CASA state end product,'' and ''United States'' have the meanings given in the Buy American Act—Free Trade Agreements—Balance of Payments Program clause of this solicitation.

(b)(2) For line items subject to Free Trade Agreements, will evaluate offers of qualifying country end products, SC/CASA state end products, or Canadian end products without regard to the restrictions of the Buy American Act or the Balance of Payments Program.

(c)(2)(i) The offeror certifies that the following supplies are qualifying country (except Canadian) or SC/CASA state end products:

(Line Item Number)
(Country of Origin)

_____

(c)(2)(ii) The offeror certifies that the following supplies are Canadian end products:

(Line Item Number)
(Country of Origin)

_____

17. Amend section 252.225–7036 by revising Alternate I; adding Alternate II and Alternate III at the end of the section to read as follows:

252.225–7036 Buy American Act—Free Trade Agreements—Balance of Payments Program.

* * * * *

Alternate I (Date)

As prescribed in 225.1101(11)(i)(B), substitute the following paragraphs (a)(8) and (c) for paragraphs (a)(8) and (c) of the basic clause:

(a)(8) * * *

Alternate II (Date)

As prescribed in 225.1101(11)(i)(A), add the following new definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause:

(a)(14) ''South Caucasus/Central and South Asian (SC/CASA) state'' means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(15) ''SC/CASA state end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Free Trade Agreement country end products other than Bahrainian end products or Moroccan end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Free Trade Agreement country end product other than a Bahrainian end product or a Moroccan end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Free Trade Agreement country end product other than a Bahrainian end product or a Moroccan end product, or, at the Contractor's option, a domestic end product.

Alternate III (Date)

As prescribed in 225.1101(11)(i)(B), add the following definitions to paragraph (a) and substitute the following paragraph (c) for paragraph (c) of the basic clause,

(a)(14) ''Canadian end product,'' means an article that—

(i) Is wholly the growth, product, or manufacture of Canada; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(15) ''South Caucasus/Central and South Asian (SC/CASA) state'' means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(16) ''SC/CASA state end product'' means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Canadian end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Canadian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Canadian end product or, at the Contractor's option, a domestic end product.

18. Amend section 252.225–7044 by adding Alternate I at the end of the section.

252.225–7044 Balance of Payments Program—Construction Material.

* * * * *

Alternate I (Date)

As prescribed in 225.7503(a) 225.7503(a)(ii), add the following definitions to paragraph (a) and replace the phrase ''domestic construction material'' in the second sentence of paragraph (b) with the phrase ''domestic construction material or SC/CASA state construction material.''

''South Caucasus/Central and South Asian (SC/CASA) state'' means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

''SC/CASA state construction material'' means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

19. Amend section 252.225–7045 by revising the clause date of Alternate I; revising paragraph (b) of Alernate I; and adding Alternate II and Alternate III to read as follows:

252.225–7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

Alternate I (Date). * * *

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA and all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for designated country construction material other than Bahrainian or Mexican construction material.

* * * * *

Alternate II (Date)

As prescribed in 225.7503(b)(iii), add the following definitions to paragraph (a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d): ''South Caucasus/Central and South Asian (SC/CASA) state'' means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

''SC/CASA state construction material'' means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, Free Trade Agreements, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction materials.

(c) The Contractor shall use only domestic, SC/CASA state. or designated country construction material in performing this contract, except for—

(d) The contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

Alternate III (Date) As prescribed in 225.7503(b)(iv), add the following definitions to paragraph (a); substitute the following paragraph (b) and the introductory text of paragraph (c) for paragraph (b) and the introductory text of paragraph (c) of the basic clause; and add the following paragraph (d):

''South Caucasus/Central and South Asian (SC/CASA) state'' means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

''SC/CASA state construction material'' means construction material that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different construction material distinct from the material from which it was transformed.

(b) This clause implements the Balance of Payments Program by providing a preference for domestic construction material. In addition, the Contracting Officer has determined that the WTO GPA, all Free Trade Agreements except NAFTA and the Bahrain Free Trade Agreement, and other waivers relating to acquisitions in support of operations in Afghanistan apply to this acquisition. Therefore, the Balance of Payments Program restrictions are waived for SC/CASA state and designated country construction material other than Bahrainian or Mexican construction material.

(c) The Contractor shall use only domestic, SC/CASA state, or designated country construction material other than Bahrainian or Mexican construction material in performing this contract, except for—

(d) The contractor shall inform its government of its participation in this acquisition and that it generally will not have such opportunity in the future unless its government provides reciprocal procurement opportunities to U.S. products and services and suppliers of such products and services.

[FR Doc. E9–30292 Filed 1–5–10; 8:12 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR 223 and 224

[Docket No. 0912231440–91443–01]

RIN 0648–XT28

Endangered and Threatened Wildlife; Notice of 90–Day Finding on a Petition to List Atlantic Sturgeon as Threatened or Endangered under the Endangered Species Act (ESA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: 90–day petition finding; request for information.

SUMMARY: We (NMFS) announce a 90–day finding on a petition to list Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*) as endangered, or to list multiple distinct population segments (DPSs) as threatened or endangered and designate critical habitat under the ESA. We find that the petition presents substantial scientific or commercial information indicating that the petitioned actions may be warranted. A status review for Atlantic sturgeon was completed in February 2007, and we are currently preparing a determination on whether listing the species or DPSs of the species as threatened or endangered is warranted. To ensure that the determination considers information that is comprehensive and current, we solicit scientific and commercial information regarding this species.

DATES: Information and comments must be submitted to NMFS by February 5, 2010.

ADDRESSES: You may submit comments, information, or data, identified by the Regulation Identifier Number (RIN), 0648 XT28, by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal: *http://www.regulations.gov*.

Mail: Assistant Regional Administrator, Protected Resources Division, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930 (for Atlantic sturgeon populations occurring in the Northeast); or Assistant Regional Administrator, Protected Resources Division, NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701 (for Atlantic sturgeon populations occurring in the Southeast).

Facsimile (fax): 978–281–9394 (for Atlantic sturgeon populations occurring in the Northeast); 727–824–5309 (for Atlantic sturgeon populations occurring in the Southeast).

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

We will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Interested persons may obtain a copy of this petition and the 2007 status review from the above addresses or online from the NMFS website: *http://www.nmfs.noaa.gov/pr/species/fish/atlanticsturgeon.htm#documents*.

FOR FURTHER INFORMATION CONTACT: Kimberly Damon-Randall or Lynn Lankshear, (978) 282–8485 and (978) 282–8473, NMFS Northeast Region; Kelly Shotts, NMFS Southeast Region, (727) 824–5312; or Lisa Manning, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2009, we received a petition from the Natural Resources Defense Council (NRDC) to list Atlantic sturgeon as endangered under the ESA. As an alternative, the petitioner requested that the species be delineated and listed as the five DPSs described in the 2007 Status Review of Atlantic Sturgeon (SRT, 2007); i.e., Gulf of Maine, New York Bight, Chesapeake Bay, Carolina, and South Atlantic DPS, with the Gulf of Maine and South Atlantic DPSs listed as threatened, and the remaining three DPSs listed as endangered. The petitioner also requested that critical habitat be designated for Atlantic sturgeon under the ESA. The petition summarizes how the species has declined as a result of overfishing during the 19th century and has failed to recover in the time since a coast-wide fishing moratorium was put in place in 1998. The petition cites bycatch, degraded water quality, dams, dredging, and ship strikes as the most important factors contributing to the continued decline of this species. The petition also cites global warming as a factor that will become increasingly significant as a stressor on Atlantic sturgeon populations by exacerbating harmfully low dissolved oxygen (DO) concentrations (or hypoxic water conditions), to which Atlantic sturgeon are particularly sensitive. The petition summarizes the biology, status, and threats for Atlantic sturgeon and for each petitioned DPS.

As described in the petition and in the 2007 status review (SRT, 2007), the historic range of Atlantic sturgeon in the United States included approximately 38 rivers, from the St. Croix River in Maine to the Saint Johns River in Florida. Atlantic sturgeon were also historically present in approximately four river systems in Canada. The Gulf of Maine DPS includes the Penobscot, Saco and Merrimack Rivers, and the estuarial complex of the Kennebec, Androscoggin, and Sheepscot Rivers. The New York Bight DPS includes the Taunton, Connecticut, Hudson, and Delaware River systems. The

Chesapeake Bay DPS includes the York, James, Rappahannock, Potomac, Susquehanna, and Nanticoke Rivers. The Carolina DPS includes the Roanoke River and Abermarle Sound; the Tar and Neuse Rivers and Pamlico Sound; the Cape Fear River; Winyah Bay and Waccamaw, Great Pee Dee, and Sampit Rivers; and the Santee and Cooper Rivers. The South Atlantic DPS includes the Ashepoo, Combahee, and Edisto (ACE) River basin; and the Savannah, Ogeechee, Altamaha, Satilla, St. Mary's, and Saint Johns Rivers.

ESA Statutory Provisions and Policy Considerations

Section 4(b)(3)(A) of the ESA of 1973, as amended (U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce (Secretary) make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Joint ESA-implementing regulations between NMFS and U.S. Fish and Wildlife Service (USFWS; 50 CFR 424.14) define ''substantial information'' as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted.

In making a finding on a petition to list a species, the Secretary must consider whether the petition: (i) clearly indicates the administrative measure recommended and gives the scientific and any common name of the species involved; (ii) contains a detailed narrative justification for the recommended measure, describing, based on available information, past and present numbers and distribution of the species involved and any threats faced by the species; (iii) provides information regarding the status of the species over all or a significant portion of its range; and (iv) is accompanied by the appropriate supporting documentation in the form of bibliographic references, reprints of pertinent publications, copies of reports or letters from authorities, and maps (50 CFR 424.14(b)(2)). Within 12 months of receipt of the petition, we shall conclude the review with a finding as to whether the petitioned action is warranted.

Under the ESA, a listing determination may address a species, subspecies, or a distinct population segment of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(15)). In 1996, the USFWS and NMFS published the Policy on the Recognition of a Distinct Vertebrate Population Segments under the Endangered Species Act (61 FR 4722; February 7, 1996). This policy identifies two criteria that must be considered in determining whether DPSs exist for a species: discreteness and significance. If both criteria are met, then the conservation status of the DPS is evaluated to determine if it is threatened or endangered.

A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, or ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively).

Distribution and Life History of Atlantic Sturgeon

Currently, Atlantic sturgeon presence is documented in 36 rivers in the United States and Canada, combined (SRT, 2007; J. Sulikowski, UNE, pers. comm.). At least 20 rivers are believed to support spawning based on available evidence (i.e., presence of young-of-year or gravid Atlantic sturgeon documented within the past 15 years; SRT, 2007). These rivers include the Saint Lawrence, QB; Annapolis, NS; Saint John, NB; Kennebec, ME; Hudson, NY; Delaware, NJ/DE/PA; James, VA; Roanoke, NC; Tar-Pamlico, NC; Cape Fear, NC; Waccamaw, SC; Great PeeDee, SC; Santee, SC; Cooper, SC; Combahee, SC; Edisto, SC; Savannah, SC/GA; Ogeechee, GA; Altamaha, GA; and, the Satilla, GA (SRT, 2007). Rivers with possible, but unconfirmed, spawning include the St Croix, NB/ME; Penobscot, Androscoggin, and Sheepscot, ME, York, VA; and, Neuse, NC (SRT, 2007).

Comprehensive information on current abundance of Atlantic sturgeon is lacking for any of the spawning rivers (SRT, 2007). In the United States, an estimate of 870 spawning adults per year is available for the Hudson River (Kahnle et al., 2007). However, the estimate is based on data collected from 1985–1995 and may underestimate current conditions (Kahnle et al., 2007). An estimate of 343 spawning adults per year is available for the Altamaha River, GA, based on data collected in 2004–2005 (Schueller and Peterson, 2006). Data collected from the Hudson River and Altamaha River studies cannot be used to estimate the total number of adults in either population since mature Atlantic sturgeon may not spawn every year (Vladykov and Greeley, 1963; Smith, 1985; Van Eenennaam et al., 1996; Stevenson and Secor, 1999; Collins et al., 2000; Caron et al., 2002), and it is unclear to what extent mature fish in a non-spawning condition occur on the spawning grounds. Nevertheless, since the Hudson and Altamaha rivers are presumed to have the healthiest Atlantic sturgeon populations within the U.S., other U.S. populations are predicted to have fewer spawning adults than either the Hudson or the Altamaha (SRT, 2007).

It is clear that Atlantic sturgeon underwent significant range-wide declines from historical abundance levels due to overfishing (reviewed in Smith and Clugston, 1997). In 1870, a significant fishery for the species developed when a caviar market was established. Record landings were reported in 1890, when over 3,350 metric tons (mt) of Atlantic sturgeon were landed from coastal rivers along the Atlantic Coast (reviewed in Smith and Clugston, 1997; Secor and Waldman, 1999). The fishery collapsed in 1901, ten years after peak landings, when less than 10% (295 mt) of its 1890 peak landings were reported. During the 1950s, the remaining fishery switched to targeting sturgeon for flesh, rather than caviar. Commercial fisheries were active in many rivers during all or some of the period from 1962 to 1997, although at much lower levels than in the late 1800's to early 1900's (Taub, 1990; Smith and Clugston, 1997). Nevertheless, many of these contemporary fisheries also resulted in overfishing, which prompted the Atlantic States Marine Fisheries Commission (ASMFC) to impose the 1998 coastwide moratorium for fisheries targeting Atlantic sturgeon and prompted NMFS to close the U.S. exclusive economic zone (EEZ) to Atlantic sturgeon retention in 1999.

The general life history pattern of Atlantic sturgeon is that of a long lived (approximately 60 years; Mangin, 1964; Stevenson and Secor, 1999), late maturing, estuarine dependent, anadromous species (SRT, 2007). Atlantic sturgeon can reach lengths of up to 14 feet (4.26 m), and weights of over 800 pounds (364 kg). Atlantic sturgeon are distinguished by armor-like plates and a long snout with a ventrally located protruding mouth. Four barbels crossing in front of the mouth help the sturgeon to locate prey. Sturgeon are omnivorous benthic feeders (feed off the bottom) and filter quantities of mud along with their food. Adult sturgeon diets include mollusks, gastropods, amphipods, isopods, and fish. Juvenile sturgeon feed on aquatic insects and other invertebrates (SRT, 2007).

Fecundity of female Atlantic sturgeon has been correlated with age and body size, with observed egg production ranging from 400,000 to 4 million eggs

per spawning year (Smith *et al.*, 1982; Van Eenennaam *et al.*, 1996; Van Eenennaam and Doroshov, 1998; Dadswell, 2006). Female gonad weight varies from 12–25 percent of the total body weight (Smith, 1907; Huff, 1975; Dadswell, 2006). The average age at which 50 percent of the maximum lifetime egg production is achieved is estimated to be 29 years (Boreman, 1997).

Multiple studies have shown that spawning intervals for Atlantic sturgeon range from 1–5 years for males (Smith, 1985; Collins *et al.*, 2000; Caron *et al.*, 2002) and 2–5 years for females (Vladykov and Greeley, 1963; Van Eenennaam *et al.*, 1996; Stevenson and Secor, 1999). While there is a window of time for each river during which spawning occurs, spawning females do not migrate upstream en masse. Individual females make rapid spawning migrations upstream and quickly depart following spawning (Bain, 1997). Spawning males usually arrive on the spawning grounds before any of the females have arrived and leave after the last female has spawned (Bain, 1997). Presumably, this provides an opportunity for a single male to fertilize eggs of multiple females.

Spawning is believed to occur in flowing water between the salt front of estuaries and the fall line of large rivers, where optimal flows are 46–76 cm/s and depths are 11–27 meters (Borodin, 1925; Leland, 1968; Scott and Crossman, 1973; Crance, 1987; Bain *et al.*, 2000). Sturgeon eggs are highly adhesive and are deposited on the bottom substrate, usually on hard surfaces such as cobble (Gilbert, 1989; Smith and Clugston, 1997). Hatching occurs approximately 94 and 140 hours after egg deposition at temperatures of 20 and 18° C, respectively, and, once hatched, larvae assume a demersal existence (Smith *et al.*, 1980). The yolksac larval stage is completed in about 8–12 days, during which time the larvae move downstream to the rearing grounds (Kynard and Horgan, 2002). During the first half of this migration, larvae move only at night and use benthic structure (e.g., gravel matrix) as refuge during the day (Kynard and Horgan, 2002). During the latter half of migration to the rearing grounds, when larvae are more fully developed, movement occurs during both day and night. Larvae transition into the juvenile phase as they continue to move farther downstream into brackish waters, developing a tolerance to salinity as they go, and eventually becoming residents in estuarine waters for months or years. Juveniles then transition to the subadult phase while commencing oceanic migrations. Subadults travel widely once they emigrate from rivers (Holland and Yelverton, 1973; Doevel and Berggen, 1983; Waldman *et al.*, 1996; Dadswell, 2006; SRT, 2007). Atlantic sturgeon spend most of their adult life in the marine environment distributed along the eastern coast of North America (SRT, 2007). However, adult Atlantic sturgeon generally return to their natal rivers to spawn (Collins *et al.*, 2000; K. Hattala, NYSDEC, pers. comm. in SRT, 2007).

Atlantic sturgeon exhibit clinal variation in growth rate, age at maturity, and timing of spawning. In general, Atlantic sturgeon originating from more southern river systems show faster growth and earlier age at maturation than fish in northern systems, although not all data sets conform to this trend. For example, Atlantic sturgeon mature in South Carolina at 5 to 19 years (Smith *et al.*, 1982), in the Hudson River at 11 to 21 years (Young *et al.*, 1998), and in the Saint Lawrence River at 22 to 34 years (Scott and Crossman, 1973). Spawning migrations generally occur during February-March in southern systems, April-May in mid-Atlantic systems, and May-July in Canadian systems (Murawski and Pacheco, 1977; Smith, 1985; Bain, 1997; Smith and Clugston, 1997; Caron *et al.*, 2002). In some rivers, predominantly in the south, a fall spawning migration may also occur (Rogers and Weber, 1995; Weber and Jennings, 1996; Moser *et al.*, 1998).

Analysis of the Petition

We evaluated the information referenced in the petition and all other information readily available in our files to determine if the petition presents substantial scientific or commercial information indicating that the petitioned actions may be warranted. In the petition, NRDC provided relevant data and citations, a detailed narrative justification for the recommended listings, and available information regarding past and present numbers and distribution of the species. The petition provides a detailed overview of current threats to the species according to the factors in section 4(a)(1) of the ESA: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) over utilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting [the species] continued existence (section 4 (a)(1) of the ESA). Below, we summarize our analysis of the threats information presented in the petition.

The petition cites the 2007 status review (SRT, 2007), which provides information on sources of past and present habitat destruction and modification that have impacted Atlantic sturgeon. Among the most significant sources of habitat modification and destruction are dams and tidal turbines, dredging and blasting, water quality, and climate change. Dams and tidal turbines can block access to spawning and foraging habitat, alter river flow and temperature regimes, and cause physical injury and mortality to migrating fish. Dredging and blasting operations in support of commercial shipping, boating, mining and construction have impacted Atlantic sturgeon habitat through disturbance of benthic prey, elimination of habitat structure (e.g., deep holes), and alteration of benthic substrate (e.g., siltation of rocky substrates). The petition also discusses evidence of diminished water quality in large portions of coastal waters along the East Coast, in particular in the Northeast and in the Chesapeake Bay; however, some improvements have been observed (EPA, 2008). The petitioner cites evidence that indicates climate change has the potential to further threaten Atlantic sturgeon habitat through exacerbation of low DO levels and changes in salinity as a result of rising sea level.

As described previously, Atlantic sturgeon once supported extensive commercial fisheries along the East Coast, and overharvest through these fisheries led to significant reductions in abundance and distribution of Atlantic sturgeon (SRT, 2007). The petition presents information to indicate that, in addition to direct harvest, bycatch of Atlantic sturgeon in commercial fisheries, sink-net and trawl fisheries in particular, is a current source of mortality within inland, coastal and Federal waters along the entire U.S. Atlantic coast (SRT, 2007).

Very little is known about natural predation rates on Atlantic sturgeon. However, the petition discusses management concerns regarding predation of juvenile Atlantic sturgeon by the introduced flathead catfish in various river basins. The petition also indicates that some disease organisms have been identified in wild Atlantic sturgeon, and that pathogens introduced through aquaculture operations and release of aquarium fish are a potential concern.

As summarized here, the petition discusses the numerous Federal (U.S. and Canadian), state and provincial, and inter-jurisdictional laws, regulations, and agency activities directed at

Atlantic sturgeon. The ASMFC manages Atlantic sturgeon through an interstate fisheries management plan (FMP) that was developed in 1990 (Taub, 1990). In 1998, the ASMFC amended the Atlantic sturgeon FMP to establish a moratorium on Atlantic sturgeon commercial fishing until 20 year classes of adults were established, effectively closing the fishery for 20–40 years. The Atlantic Coastal Fisheries Cooperative Management Act (ACFCMA), authorized under the terms of the ASMFC Compact, as amended (Public Law 103–206), provides the Secretary with the authority to implement regulations in the EEZ in the absence of an approved Magnuson-Stevens FMP that is compatible with ASMFC FMPs. In 1999, under the authority of the ACFCMA, NMFS implemented regulations to prohibit the retention and landing of Atlantic sturgeon bycatch from federally regulated fisheries. Many states within the riverine and estuarine range of Atlantic sturgeon have regulations for their inshore gillnet fisheries to reduce the likelihood of Atlantic sturgeon bycatch mortality in the nets. However, there are no fishery-specific regulations currently in place to address Atlantic sturgeon bycatch in federally regulated fisheries. In addition, the petitioner cites other Federal laws and regulations that have not adequately addressed threats to Atlantic sturgeon habitat, including poor water quality, dredging, and altered water flows.

The petition presents information on other natural or manmade factors that may affect Atlantic sturgeon, including impingement and entrainment (by commercial, agricultural, and municipal water intake structures), vessel strikes (by commercial and recreational boats), and artificial propagation (stock enhancement and commercial aquaculture). In summary, vessel strikes are a significant stressor in rivers with large ports and narrow waterways (e.g., the Delaware, James, and Cape Fear Rivers). Impingement/entrainment may represent a significant threat to the species in particular areas, especially when intake structures are located near spawning grounds. Artificial propagation may impact Atlantic sturgeon as a result of escapement and consequent introduction of disease, hybridization, and food competition.

Petition Finding

We have reviewed the petition, the literature cited in the petition, and other literature and information available in our files. The petition frequently references the status review that was completed in 2007. Based on the literature and information, we find that the petition meets the aforementioned requirements of the regulations under 50 CFR 424.14(b)(2) and, therefore, determine that the petition presents substantial information indicating that the requested listing actions may be warranted.

Information Solicited

Information on Status of the Species

The most recent status review of Atlantic sturgeon was completed in 2007 (72 FR 15865; April 3, 2007). We intend that any final action in response to this petition be as accurate and as effective as possible. Therefore, we are soliciting information from the public, government agencies, the scientific community, industry, and any other interested parties on the status of Atlantic sturgeon throughout its range, including:

(1) Historical and current distribution and abundance of Atlantic sturgeon throughout its range (U.S. and Canada);

(2) Historic and current condition of Atlantic sturgeon habitat and whether any areas should be classified as critical habitat;

(3) Population density and trends;

(4) Information on the effects of climate change on the distribution and condition of Atlantic sturgeon and its habitat over the short- and long-term;

(5) Information on the effects of threats, including bycatch, dredging, dams, pollution, hypoxia, disease, predation, poaching, aquaculture, vessel strikes, climate change, and aquatic invasive species, on the distribution and abundance of Atlantic sturgeon over the short- and long-term; and

(6) Information on management programs or protective efforts for Atlantic sturgeon, including mitigation measures related to any of the threats listed under (5) above, any ongoing efforts to protect and conserve Atlantic sturgeon, as well as information on recently implemented or planned activities and their likely impact(s).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: December 30, 2009.

James W. Balsiger,

Acting Assistant Administrator, National Marine Fisheries Service.

[FR Doc. E9–31373 Filed 1–5–10; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 75, No. 3

Wednesday, January 6, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Central Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393), the Salmon-Challis National Forest's Central Idaho Resource Advisory Committee will conduct a business meeting which is open to the public.

DATES: Thursday, January 14, 2010, beginning at 10 a.m.

ADDRESSES: Salmon-Challis N.F. South Zone Office, Highway 93, Challis, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review 2009 projects and begin review and approval of new project proposals for 2010. The meeting will include an open public forum.

FOR FURTHER INFORMATION CONTACT: William A. Wood, Forest Supervisor and Designated Federal Officer, at 208–756–5111.

Dated: December 8, 2009.

William A. Wood,

Forest Supervisor, Salmon-Challis National Forest.

[FR Doc. E9–31285 Filed 1–5–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges: Hailin Lin

In the Matter of: Hailin Lin, 1218 Dewey St., #14, Manitowoc, WI 54220, Respondent. 07–BIS–01.

Order Relating to Hailin Lin

The Bureau of Industry and Security, U.S. Department of Commerce (''BIS'') has initiated an administrative proceeding against Hailin Lin (''Lin'') pursuant to Section 766.3 of the Export Administration Regulations (the ''Regulations''),[1] and Section 13(c) of the Export Administration Act of 1979, as amended (the ''Act''),[2] through the issuance of a charging letter to Lin that alleged that she committed 124 violations of the Regulations. Specifically, the charges are:

Charge 1: 15 CFR 764.2(d)—Conspiracy To Export Electronic Components to the Republic of China Without the Required Licenses

Between on or about March 16, 1992 and on or about September 30, 2004, Lin conspired with others, known and unknown, to bring about acts that violated the Regulations. The object of the conspiracy was to export electronic components from the United States to the People's Republic of China (PRC) in violation of U.S. export control laws by failing to obtain the proper export licenses for certain shipments, and/or providing false descriptions and/or withholding required information on the invoices provided to the shippers. In furtherance of this conspiracy, the co-conspirators, through Wen Enterprises—a business run by Lin out of her own home—caused exports of electronic components controlled under Export Control Classification Numbers (''ECCNs'') 3A001 and 3A002 on the Commerce Control List to the PRC without the licenses required by the Regulations. Items classified under ECCNs 3A001 and 3A002 are controlled for national security reasons and their export to the PRC requires a license from the U.S. Department of Commerce pursuant to Section 742.2 of the Regulations. Also in furtherance of this conspiracy, the co-conspirators made false representations regarding the true value of shipments being exported to the PRC. In conspiring to bring about acts that violate the Regulations, Lin committed one violation of Section 764.2(d) of the Regulations.

Charges 2–56: 15 CFR 764.2(b)—Causing an Export Without the Required License

Between on or about January 28, 2002 through on or about September 30, 2004, Lin caused 55 acts prohibited by the Regulations. Specifically, Lin caused 55 exports of items controlled under ECCNs 3A001 and 3A002 to the PRC without the licenses required by Section 742.2 of the Regulations. These exports were committed in furtherance of and as a reasonably foreseeable consequence of the conspiracy described in Charge One above. In so doing, Lin committed 55 violations of Section 764.2(b) of the Regulations.

Charges 57–111: 15 CFR 764.2(e)—Acting With Knowledge of a Violation

In connection with each of the transactions described in Charges 2 through 56 above, on 55 occasions between on or about January 28, 2002 through on or about September 30, 2004, Lin bought, sold, and/or transferred electronic components subject to the Regulations to be exported from the United States with knowledge that a violation of the Regulations was about to occur or was intended to occur in connection with the components. Specifically, at the time that the electronic components were bought, sold and/or transferred, all of which were done as a reasonably foreseeable consequence of the conspiracy described in Charge One above, Lin knew or had reason to know that the export of the items required an export license but that an export license would not be obtained. In so doing, Lin committed 55 violations of Section 764.2(e) of the Regulations.

Charges 112–12415: CFR 764.2(h)—Taking Action With Intent To Evade the Regulations

In connection with certain transactions described above, on thirteen occasions between on or about April, 5 2004 through on or about September 30, 2004, Lin took actions with intent to evade the provisions of the Regulations. Specifically, in connection with the preparation of export control documents, Lin did make false statements and conceal material facts by representing on shipping invoices that the value of thirteen different shipments was less than $2500 when in fact the true value of the shipments exceeded $2500. This was done so that Shipper's Export Declarations, which are filed with the U.S. Government and which must contain information about export license requirements, would not be requested for the exports. In so doing, Lin committed 13 violations of Section 764.2(h) of the Regulations.

Whereas, BIS and Lin have entered into a Settlement Agreement pursuant to Section 766.18(b) of the Regulations whereby they agreed to settle this matter

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2009). The violations charged occurred between 2002 and 2004. The Regulations governing the violations at issue are found in the 2002–2004 versions of the Code of Federal Regulations. The 2009 Regulations govern the procedural aspects of this case.

[2] 50 U.S.C. app. §§ 2401–2420 (2000). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 13, 2009 (74 FR 41325 (Aug. 14, 2009)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706).

in accordance with the terms and conditions set forth therein, and

Whereas, I have approved of the terms of such Settlement Agreement;

It is therefore ordered:

First, that Lin shall be assessed a civil penalty in the amount of $1,364,000, the payment of which shall be suspended for a period of one (1) year from the date of entry of the Order, and thereafter shall be waived, provided that during the suspension, Lin has committed no violation of the Act, or any regulation, order or license issued thereunder.

Second, that for a period of 15 years from the date of issuance of the Order, Hailin Lin, 1218 Dewey St., #14, Manitowoc, WI 54220, and when acting on behalf of Lin, her representatives, assigns, or agents (''Denied Person'') may not participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

Third, that no person may, directly or indirectly, do any of the actions described below with respect to an item that is subject to the Regulations and that has been, will be, or is intended to be exported or reexported from the United States

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Fourth, that, after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to Lin by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of the Order.

Fifth, that the charging letter, the Settlement Agreement, this Order, and the record of this case as defined by Section 766.20 of the Regulations shall be made available to the public.

Sixth, that the Administrative Law Judge shall be notified that this case is withdrawn from adjudication.

Seventh, that this Order shall be served on the Denied Person and on BIS, and shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Entered this *29th* day of *December* 2009.

Kevin Delli-Colli,

Deputy Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. E9–31366 Filed 1–5–10; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Call for Applications for the Commerce Spectrum Management Advisory Committee

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Reopening of Application Period.

SUMMARY: The National Telecommunications and Information Administration (NTIA) seeks applications from persons interested in serving on the Department of Commerce's Spectrum Management Advisory Committee (CSMAC) for new two-year terms. This Notice reopens the application period announced in the **Federal Register** on May 6, 2009 (the May Notice) in order to identify additional candidates who may provide balance in terms of points of view, as well as diversity, to the committee. Any applicant who provided NTIA with the requested materials in response to the May Notice will be considered for appointment and need not resubmit materials, although they are permitted to supplement their applications with new or additional information.

DATES: Applications must be postmarked or electronically transmitted on or before February 1, 2010.

ADDRESSES: Persons wishing to submit applications should send their resumes or *curriculum vitae* and a statement summarizing the qualifications of the nominee and identifying any particular expertise or area of interest relevant to the CSMAC's work to the attention of: Joe Gattuso, Designated Federal Officer, by email to spectrumadvisory@ntia.doc.gov; by U.S. mail or commercial delivery service to: Office of Policy Analysis and Development, National Telecommunications and Information Administration, 1401 Constitution Avenue NW, Room 4725, Washington, DC 20230; or by facsimile transmission to (202) 482–6173.

FOR FURTHER INFORMATION CONTACT: Joe Gattuso, Designated Federal Officer, at (202) 482–0977 or jgattuso@ntia.doc.gov.

SUPPLEMENTARY INFORMATION: The Secretary of Commerce appoints members to the CSMAC for two-year terms. They are experts in radio spectrum policy, do not represent any organization or interest, and serve in the

capacity of Special Government Employees. Members do not receive compensation or reimbursement for travel or for per diem expenses. Members may not be federally registered lobbyists. Previously, the charter allowed CSMAC to have up to 20 members. The renewed charter, effective April 6, 2009, allows up to 25 members to serve on the CSMAC.

On May 6, 2009, NTIA published a Notice in the **Federal Register** seeking additional persons interested in appointment, with applications due June 1, 2009 (the May Notice), 74 Fed. Reg. 20922 (May 6, 2009), available at http://www.ntia.doc.gov/frnotices/2009/ CSMACCallForApplications May609.pdf. In November 2009, the Secretary appointed three new members from among those applications, bringing the current membership to 22 members.

NTIA intends to recommend that the Secretary appoint up to three additional members. The Federal Advisory Committee Act (5 USC App. 2) and CSMAC's charter require that the committee be fairly balanced in terms of the points of view represented by the members and the functions to be performed. This Notice reopens the application period in order to identify additional candidates who may provide such balance, as well as diversity, to the committee. Any applicant who provided NTIA with the requested materials in response to the May Notice will be considered for appointment and need not resubmit materials, although they are permitted to supplement their applications with new or additional information.

The evaluation criteria for selecting members contained in the May Notice shall continue to apply. However, members may not be federally registered lobbyists.

Applicants should submit their resumes or *curriculum vitae* and a statement that summarizes the applicant's qualifications and experience. The statement should identify any particular expertise or area of interest relevant to the CSMAC's work. This will aid in the assessment of whether the applicant's qualifications and experience will contribute to the balance of points of view represented on the committee.

Dated: December 31, 2009.

Milton Brown,

Acting Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2010–31384 Filed 1–5–10; 8:45 am]

BILLING CODE 3510–60–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') is extending the time limit for the preliminary results of the new shipper review of certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam''). This review covers the period February 1, 2008 through January 31, 2009.

DATES: *Effective Date:* January 6, 2010.

FOR FURTHER INFORMATION CONTACT: Toni Dach or Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1655 or (202) 482–0413, respectively.

Background

On March 27, 2009, the Department published a notice of initiation of the new shipper review in the antidumping duty order on shrimp from Vietnam for Nhat Duc Co., Ltd. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review*, 74 FR 13416 (March 27, 2009). On September 15, 2009, the Department extended the time limit for issuing the preliminary results of the new shipper review by 106 days. *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Extension of Preliminary Results of Antidumping Duty New Shipper Review*, 74 FR 47190 (September 15, 2009). The preliminary results of this review are currently due no later than December 31, 2009.

Statutory Time Limits

In antidumping duty new shipper reviews, section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.214(i)(1) requires the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results within 90 days after the date on which the preliminary results are issued. However, the Department may extend the deadline for completion of the preliminary results of a new shipper review to 300 days if it determines that the case is extraordinarily complicated. *See* 19 CFR 351.214(i)(2).

Extension of Time Limit for Preliminary Results of Review

The Department has determined that the review is extraordinarily complicated as the Department must analyze numerous supplemental questionnaires and information gathered at verification. Based on the timing of the case and the additional information that must be analyzed, the preliminary results of this new shipper review cannot be completed within the statutory time limit of 180 days.

Therefore, the Department is extending the time limit for completion of the preliminary results of this new shipper review by an additional 14 days from the December 31, 2009, deadline. The preliminary results will now be due no later than January 14, 2009. The final results continue to be due 90 days after the issuance of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: December 29, 2009.

Susan Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–31421 Filed 1–5–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of the 2007–2008 Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 08, 2009, the Department of Commerce (''Department'') published *Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Preliminary Results of the 2007–2008 Administrative Review of the Antidumping Duty Order*, 74 FR 32539 (July 08, 2009) (''*Preliminary Results*''). The period of review (''POR'') is June 1, 2007, through May 31, 2008. The administrative

review covers one respondent, Peer Bearing Company—Changshan (''CPZ'').

We invited interested parties to comment on our *Preliminary Results.* Based on our analysis of the comments received, we made certain changes to our margin calculation for CPZ. The final dumping margin for this review is listed in the ''Final Results Margins'' section below.

DATES: *Effective Date:* January 6, 2010.

FOR FURTHER INFORMATION CONTACT: Frances Veith or Brendan Quinn, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4295 and (202) 482–5848, respectively.

Background

On July 08, 2009, the Department published its *Preliminary Results* in the antidumping duty administrative review of tapered roller bearings and parts thereof, finished and unfinished (''TRBs''), from the People's Republic of China (''PRC'').

We received comments from the Timken Company (''Petitioner'') and CPZ. CPZ submitted its case brief and rebuttal brief on August 12, and August 19, 2009, respectively. Petitioner submitted its case brief and rebuttal brief on August 11, and August 20, 2009, respectively. On August 11, 2009, Petitioner submitted a request for a formal hearing regarding issues raised in its case and rebuttal brief, and submitted a letter withdrawing the request for a hearing on August 21, 2009. On October 15, 2009, the Department extended the deadline for the final results of review to December 5, 2009. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Extension of Time Limit for the Final Results of the 2007–2008 Administrative Review of the Antidumping Duty Order*, 74 FR 52948 (October 15, 2009). On December 8, 2009, the Department again extended the deadline for the final results of review to December 26, 2009. However, since December 26, 2009, falls on a Saturday, a non-business day, the deadline for the final results is December 28, 2009, the next business day. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China; Extension of Time Limit for the Final Results of the 2007–2008 Administrative Review of the Antidumping Duty Order*, 74 FR 64663 (December 8, 2009).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Memorandum from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, regarding, Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2007–2008 Administrative Review, dated December 28, 2009 (''Issues and Decision Memorandum''), which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building, Room 1117, and is also accessible on the Web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Period of Review

The POR is June 1, 2007, through May 31, 2008.

Scope of the Order

Imports covered by this order are shipments of tapered roller bearings and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. These products are currently classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.15, 8482.99.45, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15 and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Changes Since the Preliminary Results

Based on an analysis of the comments received, the Department has made certain changes in the margin calculation. For the final results, the Department has made the following changes:

- We have revised the surrogate value for tube steel. *See* Issues and Decisions Memorandum at Comment 4; *see also* Memorandum regarding, Factors Valuations for the Final Results of the 2007–2008 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China, dated December 28, 2009; and Memorandum regarding, 2007–2008 Administrative Review of the Antidumping Duty Order on Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from the People's Republic of China: Analysis of the Final Results Margin Calculation for Peer Bearing Company—Changshan, dated December 28, 2009 (''Final Analysis Memorandum'').
- We have corrected the direct material calculation for bar and tube steel in our margin calculation. *See* Issues and Decisions Memorandum at Comment 5; *see also* Final Analysis Memorandum.

Final Results Margin

We determine the weighted-average dumping margin for CPZ for the period June 1, 2007, through May 31, 2008, to be 24.62 percent.

Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b), the Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For assessment purposes, we calculated importer (or customer)-specific assessment rates for merchandise subject to this review. Where appropriate, we calculated an *ad valorem* rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total entered values associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting *ad valorem* rate against the entered customs values for the subject merchandise. Where appropriate, we calculated a per-unit rate for each importer (or customer) by dividing the total dumping margins for reviewed sales to that party by the total sales quantity associated with those transactions. For duty-assessment rates calculated on this basis, we will direct CBP to assess the resulting per-unit rate against the entered quantity of the subject merchandise. Where an importer (or customer)-specific assessment rate is *de minimis* (*i.e.*, less than 0.50 percent), the Department will instruct CBP to assess that importer (or customer's)

entries of subject merchandise without regard to antidumping duties, in accordance with 19 CFR 351.106(c)(2). We intend to instruct CBP to liquidate entries containing subject merchandise exported by the PRC-wide entity at the PRC-wide rate we determine in the final results of this review. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For CPZ, the cash deposit rate will be 24.62 percent, as listed above; (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 92.84 percent; and 4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. The deposit requirements shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

We are issuing and publishing the final results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 28, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I

Comment 1: Country of Origin
Comment 2: Surrogate Value for Steel Bar
Comment 3: Surrogate Value for Wire Rod
Comment 4: Surrogate Value for Tube Steel
Comment 5: Calculation of Factors of Production for Tube Steel and Steel Bar
Comment 6: Assessment Rate Calculation

[FR Doc. E9–31417 Filed 1–5–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–913]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Partial Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding, in part, the administrative review of the countervailing duty order on Certain New Pneumatic Off-the-Road Tires (OTR Tires) from the People's Republic of China (PRC) for the period December 17, 2007 through December 31, 2008, with respect to the following six companies:

1. Aeolus Tyre Co. Ltd. (Aeolus)
2. Guizhou Tire Co. Ltd. (GTC)
3. Jiangsu Feichi Co., Ltd. (Feichi)
4. Shandong Huitong Tyre Co., Ltd. (Huitong)
5. Tianjin Wanda Tyre Co., Ltd. (Wanda)
6. Triangle Tyre Co., Ltd. (Triangle).

This partial rescission is based on GPX International Tire Corporation's (GPX) withdrawal of its request for a review.

DATES: *Effective Date:* January 6, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew Huston, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4261.

SUPPLEMENTARY INFORMATION:

Background

The Department published a notice of opportunity to request an administrative review of the countervailing duty order on OTR Tires from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 74 FR 45179 (September 1, 2009). GPX timely requested an administrative review of the countervailing duty order on OTR Tires from the PRC for the period December 17, 2007 through December 31, 2008.

In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.221(c)(1)(i), the Department published a notice initiating an administrative review of the countervailing duty order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 74 FR 54956 (October 26, 2009).

Rescission, in Part, of Countervailing Duty Administrative Review

The Department's regulations provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation. *See* 19 CFR 351.213(d)(1). GPX, the only party to request a review of Aeolus, GTC, Feichi, Huitong, Wanda and Triangle, timely withdrew its request for a review within the 90-day deadline. Therefore, in accordance with 19 CFR 351.213(d)(1), the Department is rescinding this administrative review of the countervailing duty order with respect to these six companies. This administrative review will continue with respect to Hebei Starbright Tire Co., Ltd., Hanghzou Zhongce Rubber Co., Ltd. and Tianjin United Tire & Rubber International Co.

Assessment

The Department will instruct U.S. Customs and Border Protection (CBP) to assess countervailing duties on all appropriate entries. For Aeolus, GTC,

Feichi, Huitong, Wanda and Triangle, countervailing duties shall be assessed, if applicable, at rates equal to the cash deposit or bonding rate of the estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4).

Dated: December 30, 2009.

Susan H. Kuhbach,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–31416 Filed 1–5–10; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–947]

Certain Steel Grating From the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* January 6, 2010.

SUMMARY: The Department of Commerce (''the Department'') preliminarily determines that certain steel grating (''steel grating'') from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733 of the Tariff Act of 1930, as amended (''Act''). The estimated margins of sales at LTFV are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

FOR FURTHER INFORMATION CONTACT: Thomas Martin or Zhulieta Willbrand, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3936 or (202) 482–3147, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 29, 2009, Fisher & Ludlow and Alabama Metal Industries Corporation (hereafter referred to as ''Petitioners'') filed an antidumping duty petition on PRC imports of steel grating. *See* the Petitions for the Imposition of Antidumping and Countervailing Duties: Certain Steel Grating from the PRC (''the Petition''). The Department initiated an antidumping duty investigation of steel grating on June 25, 2009. *See Certain Steel Grating from the People's Republic of China: Initiation of Antidumping Duty Investigation,* 74 FR 30273 (June 25, 2009) (''*Initiation Notice''*).

On July 15, 2009, the United States International Trade Commission (''ITC'') issued its affirmative preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from the PRC of steel grating. The ITC's determination was published in the **Federal Register** on July 20, 2009. *See Certain Steel Grating from China,* 74 FR 35204 (July 20, 2009); *see also Certain Steel Grating from China: Investigation Nos. 701–TA–465 and 731–TA–1161 (Preliminary),* USITC Publication 4087 (July 2009).

On July 9, 2009, we received comments from Petitioners regarding product characteristics. On July 16, 2009, we received rebuttal comments from Ningbo Jiulong Machinery Manufacturing Co., Ltd. (''Ningbo Jiulong'') regarding product characteristics. On July 23, 2009, we received additional comments from Petitioners regarding product characteristics.

In the *Initiation Notice,* the Department stated that it intended to select respondents based on quantity and value (''Q&V'') questionnaires. *See Initiation Notice,* 74 FR at 30277. On June 19, 2009, the Department requested Q&V information from the sixteen companies that Petitioners identified as potential exporters or producers of steel grating from the PRC. *See* Petition at Vol 1., Exhibit 5. Additionally, the Department also posted the Q&V questionnaire for this investigation on its Web site at *http://ia.ita.doc.gov/ia-highlights-and-news.html.* The Department received timely Q&V responses from six exporters that shipped merchandise under investigation to the United States during the period of investigation (''POI''), and from one company that stated it had no shipments of merchandise under investigation to the United States during the POI.

On July 31, 2009, the Department selected Shanghai DAHE Grating Co., Ltd. (''Shanghai DAHE'') and Ningbo Jiulong Machinery Manufacturing Co., Ltd. (''Ningbo Jiulong'') as mandatory respondents in this investigation. *See* Memorandum to the File, from Thomas Martin, International Trade Compliance Analyst, through Robert Bolling, Program Manager, to Abdelali Elouaradia, Director, Office 4, regarding Selection of Respondents for the Antidumping Investigation of Certain Steel Grating from the People's Republic of China, dated July 31, 2009 (''Respondent Selection Memo''). On July 31, 2009, the Department issued its antidumping duty questionnaire to Shanghai DAHE and Ningbo Jiulong. On August 18, 2009, Shanghai DAHE filed a letter stating that it would not participate as a mandatory respondent in this investigation. *See* Letter to the Department from Shanghai DAHE, dated August 12, 2009. On August 21, 2009, Ningbo Jiulong submitted a timely response to section A of the Department's antidumping questionnaire. On September 22, 2009, timely responses to sections C and D of the Department's antidumping questionnaire were submitted by Ningbo Jiulong.

Between August 7, 2009, and September 9, 2009, we received timely filed separate-rate applications from four companies: Sinosteel Yantai Steel Grating Co., Ltd. (''Sinosteel''); Ningbo Haitian International Co., Ltd. (''Ningbo Haitian''); Shenyang Yuanda Aluminum Industry Engineering Co., Ltd. (''Shenyang Yuanda''); and Yantai Xinke Steel Structure Co., Ltd. (''Yantai Xinke'').

The Department issued supplemental questionnaires and received responses from Sinosteel, Ningbo Haitian, and Yantai Xinke, between September 2009 and November 2009. From September 2009 through December 2009, Petitioners submitted comments to the Department regarding Ningbo Jiulong's

responses to sections A, C, and D of the antidumping questionnaire.

On August 18, 2009, the Department requested comments on surrogate country selection from the interested parties in this investigation. On September 1, 2009, Petitioners submitted surrogate country comments. No other interested parties commented on the selection of a surrogate country. For a detailed discussion of the selection of the surrogate country, *see* ''Surrogate Country'' section below.

On October 16, 2009, Ningbo Jiulong submitted publically available surrogate value information in response to specific requests for information by the Department. On November 2, 2009, both Petitioners and Ningbo Jiulong submitted additional publically available surrogate value information. On November 9 and 10, 2009, Petitioners and Ningbo Jiulong submitted rebuttal surrogate value comments.

On October 22, 2009, pursuant to section 733(c) of the Act and 19 CFR 351.205(f)(1), the Department postponed the preliminary determination by 50 days. *See Certain Steel Grating from the People's Republic of China: Postponement of Preliminary Determination of Antidumping Duty Investigation,* 74 FR 54535 (October 22, 2009).

Period of Investigation

The POI is October 1, 2008, through March 31, 2009. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (May 29, 2009). *See* 19 CFR 351.204(b)(1).

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on December 14, 2009, Ningbo Jiulong requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by 30 days. In the same submission, Ningbo Jiulong agreed that the Department may extend the application of the provisional measures prescribed under 19 CFR 351.210(e)(2) until the date of the final determination. Because our preliminary determination is affirmative, and the respondent requesting an extension of the final determination, and an extension of the provisional measures, accounts for a significant proportion of exports of the merchandise under consideration, and no compelling reasons for denial exist, we are extending the due date for the final determination by 30 days. Suspension of liquidation will be extended accordingly.

Scope of Investigation

The products covered by this investigation are certain steel grating, consisting of two or more pieces of steel, including load-bearing pieces and cross pieces, joined by any assembly process, regardless of: (1) Size or shape; (2) method of manufacture; (3) metallurgy (carbon, alloy, or stainless); (4) the profile of the bars; and (5) whether or not they are galvanized, painted, coated, clad or plated. Steel grating is also commonly referred to as ''bar grating,'' although the components may consist of steel other than bars, such as hot-rolled sheet, plate, or wire rod.

The scope of this investigation excludes expanded metal grating, which is comprised of a single piece or coil of sheet or thin plate steel that has been slit and expanded, and does not involve welding or joining of multiple pieces of steel. The scope of this investigation also excludes plank type safety grating which is comprised of a single piece or coil of sheet or thin plate steel, typically in thickness of 10 to 18 gauge, that has been pierced and cold formed, and does not involve welding or joining of multiple pieces of steel.

Certain steel grating that is the subject of this investigation is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under subheading 7308.90.7000. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Scope Comments

In accordance with the preamble to our regulations, we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice. See Antidumping Duties; Countervailing Duties; Final Rule,* 62 FR 27296, 27323 (May 19, 1997). *See also Initiation Notice,* 74 FR at 30274. We received one comment on issues related to the scope, from Shenyang Yuanda. *See* ''Separate Rates'' section below.

Non-Market Economy Country

The Department considers the PRC to be a non-market economy (''NME'') country. *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007) (''*Coated Free Sheet Paper*''). In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this investigation. Therefore, we continue to treat the PRC as an NME country for purposes of this preliminary determination.

Surrogate Country

When the Department is investigating imports from an NME country, section 773(c)(1) of the Act directs it to base normal value (''NV''), in most circumstances, on the NME producer's factors of production (''FOPs'') valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the FOPs, the Department shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The sources of the surrogate values we have used in this investigation are discussed under the ''Normal Value'' section below.

The Department determined that India, the Philippines, Indonesia, Colombia, Thailand and Peru are countries comparable to the PRC in terms of economic development.[1] Once the countries that are economically comparable to the PRC have been identified, we select an appropriate surrogate country by determining whether an economically comparable country is a significant producer of comparable merchandise and whether the data for valuing FOPs is both available and reliable. In their September 1, 2009, submission, Petitioners argued that the Department should select India as a surrogate country because it satisfies the statutory requirements for the selection of a surrogate country since it is at a level of economic development that is comparable to the PRC, and is a significant producer of merchandise

[1] *See* Memorandum from Kelly Parkhill, Acting Director, Office of Policy, to Robert Bolling, Program Manager, AD/CVD Operations, Office 4, ''Request for a List of Surrogate Countries for an Antidumping Duty Investigation of Certain Steel Grating from the People's Republic of China'' (August 14, 2009).

comparable to the merchandise under investigation. Petitioners also noted that the Department can readily value the major FOPs for subject merchandise using reliable, publicly available data from Indian sources. No other party provided comments on the record concerning the surrogate country.

We have determined that it is appropriate to use India as a surrogate country pursuant to section 773(c)(4) of the Act based on the following: (1) It is at a similar level of economic development pursuant to section 773(c)(4) of the Act; (2) it is a significant producer of comparable merchandise; and (3) we have reliable data from India that we can use to value the FOPs. Thus, we have calculated NV using Indian prices when available and appropriate to the FOPs of Ningbo Jiulong. We have obtained and relied upon publicly available information wherever possible. *See* Memorandum to the File from Thomas Martin, Senior International Trade Compliance Analyst, AD/CVD Operations, Office 4, to the File, ''Investigation of Certain Steel Grating from the People's Republic of China: Surrogate Values for the Preliminary Determination, which is dated concurrently with this notice (''Surrogate Value Memorandum'')

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in an antidumping investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of publication of the preliminary determination.[2]

Affiliation and Collapsing

Section 771(33) of the Act, provides that: The following persons shall be considered to be ''affiliated'' or ''affiliated persons'':

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such other person.

Additionally, section 771(33) of the Act stipulates that: ''For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person.''

Consistent with section 771(33)(B) of the Act, we find that the record evidence demonstrates that Ningbo Jiulong and Ningbo Zhenhai Jiulong Electronic Equipment Factory (''Jiulong Factory'') are affiliated because they are indirectly under the common control of a company officer. *See* Ningbo Jiulong's Second Supplemental Section A Response, dated November 9, 2009 (''Jiulong Second A Response'') at 3. A finding of affiliation between a producer and its supplier, however, does not justify a departure from the Department's standard practice of valuing the actual FOP(s) consumed by the producer of subject merchandise. Affiliation, by itself, does not necessarily imply that a producer's FOP(s) obtained from an affiliated supplier are self-produced.[3] Nor does the Department consider control a determinative factor in determining whether the upstream inputs of an affiliated supplier should be valued as the producer's own. While control may be a basis for finding affiliation, it does not necessarily mean the two affiliates should be collapsed and treated as a single entity for purposes of determining the margin of dumping.

Under its collapsing regulation (19 CFR 351.401(f)), the Department may collapse affiliated producers where it finds that producers have production facilities for similar or identical products, and that a significant potential for manipulation of price or production exists. The regulation addresses the specific situation of affiliated producers. However, the regulation is not exhaustive of the situations that may call for collapsing of affiliated entities, and the Department has developed a practice of collapsing entities that do not qualify as producers. For example, in the past the Department has collapsed a producer with an affiliated processor. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp From Brazil,* 69 FR 76910 (December 23, 2004) and accompanying Issues and Decision Memorandum at Comment 5.

In this case, the record evidence indicates that although Jiulong Factory is an affiliated supplier that neither produces steel grating nor is involved in the selling/exporting of steel grating, Jiulong Factory nonetheless has the potential to produce steel grating. *See* Jiulong Second A Response at 3. We have determined that Jiulong Factory's facilities would not require substantial retooling to produce the merchandise under consideration. *See* Jiulong Second A Response at 3. Further, Ningbo Jiulong reported that it purchases twisted wire rod only from Jiulong Factory, and the two operations are co-located on the same premises. Therefore, we preliminarily find that Ningbo Jiulong and Jiulong Factory have intertwined operations. *See* Jiulong Second A Response at 4. Thus, we preliminarily determine that there is record evidence of a significant potential for the manipulation of price and production. *See* 19 CFR 351.401(f). Accordingly, we find it necessary to value upstream inputs that were not used by the actual producer of the merchandise under consideration in NV calculations because such valuation would reflect the producer's, *i.e.,* Ningbo Jiulong's, own production experience. Therefore, for the preliminary determination, we have valued Jiulong Factory's inputs for twisted wire rod production with surrogate values.

Separate Rates

In the *Initiation Notice,* the Department notified parties of the application process by which exporters and producers may obtain separate rate status in NME investigations. *See Initiation Notice,* 74 FR at 19054–55. The process requires exporters and producers to submit a separate rate status application.[4] However, the

[2] In accordance with 19 CFR 351.301(c)(1), for the final determination of this investigation, interested parties may submit factual information to rebut, clarify, or correct factual information submitted by an interested party less than ten days before, on, or after, the applicable deadline for submission of such factual information. However, the Department notes that 19 CFR 351.301(c)(1) permits new information only insofar as it rebuts, clarifies, or corrects information recently placed on the record. The Department generally will not accept the submission of additional, previously absent-from-the-record alternative surrogate value information pursuant to 19 CFR 351.301(c)(1). *See Glycine from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Recission, in Part,* 72 FR 58809 (October 17, 2007) and accompanying Issues and Decision Memorandum at Comment 2.

[3] *See Lightweight Thermal Paper From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 57329 (October 2, 2008) and accompanying Issues and Decision Memorandum at Comment 8 (''*LWTP Final*''); *Electrolytic Manganese Dioxide From the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 73 FR 48195 (August 18, 2008) and accompanying Issues and Decision Memorandum at Comment 1.

[4] *See Policy Bulletin 05.1: Separate-Rate Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries,* (April 5, 2005), at 6, available at http://ia.ita.doc.gov/policy/bull05–1.pdf. (''*Policy Bulletin 05.1*''). *Policy Bulletin 05.1* states, in relevant part, ''While continuing the practice of assigning separate rates only to exporters, all

Continued

standard for separate rate eligibility has not changed.

In proceedings involving NME countries, the Department has a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. Exporters can demonstrate this independence through the absence of both *de jure* and *de facto* governmental control over export activities. The Department analyzes each entity exporting the subject merchandise under a test arising from the *Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991) (''*Sparklers*''), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994) (''*Silicon Carbide*''). However, if the Department determines that a company is wholly foreign-owned or located in a market economy, then a separate rate analysis is not necessary to determine whether it is independent from government control.

Separate Rate Recipients

1. Joint Ventures Between Chinese and Foreign Companies or Wholly Chinese-Owned Companies

Two of the separate rate applicants in this investigation are wholly Chinese-owned companies: Yantai Xinke and Ningbo Haitian (collectively, ''Chinese SR Applicants''). The Department has analyzed whether each of the two Chinese SR Applicants has demonstrated the absence of *de jure* and *de facto* governmental control over its respective export activities.

a. Absence of *De Jure* Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export license; (2) legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers,* 56 FR at 20589.

The evidence provided by the two Chinese SR Applicants supports a preliminary finding of de jure absence of governmental control based on the following: (1) An absence of restrictive stipulations associated with the individual exporters' business and export licenses; (2) the existence of applicable legislative enactments decentralizing control of Chinese companies; and (3) the implementation of formal measures by the government decentralizing control of Chinese companies.

b. Absence of *De Facto* Control

Typically, the Department considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by or are subject to the approval of a governmental agency; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide,* 59 FR at 22586–87; *see also Notice of Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From the People's Republic of China,* 60 FR 22544, 22545 (May 8, 1995). The Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The evidence provided by the two Chinese SR Applicants supports a preliminary finding of de facto absence of governmental control based on record statements and supporting documentation showing that the companies: (1) Set their own export prices independent of the government and without the approval of a government authority; (2) have the authority to negotiate and sign contracts and other agreements; (3) maintain autonomy from the government in making decisions regarding the selection of management; and (4) retain the proceeds of their respective export sales and make independent decisions regarding disposition of profits or financing of losses.

In all, the evidence placed on the record of this investigation by the two Chinese SR Applicants demonstrates an absence of *de jure* and *de facto* government control in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.* Accordingly, the Department has preliminarily granted a separate rate to the Chinese SR Applicants. *See* ''Preliminary Determination'' section below.

2. Wholly State-Owned Exporters/Manufacturers and Exporters/Manufacturers Whose Stock Is Partially Owned by a Government State Asset Management Company

One of the separate rate applicants in this investigation is a subsidiary company indirectly owned by a government State asset management company (''State-Owned SR Applicant''). According to Sinosteel's Separate Rate Application, Sinosteel is a State-owned enterprise, owned indirectly by the State Assets Administration Commission of the State Council of the People's Republic of China. *See* Sinosteel's Separate Rate Application Supplemental Response, dated September 25, 2009, at Attachment 1. Absent evidence of *de facto* control over export activities, however, government ownership alone does not warrant denying a company a separate rate. *See LWTP Final* and accompanying Issues and Decision Memorandum at Comment 7.

The Department preliminarily determines that the evidence placed on the record of this investigation by Sinosteel demonstrates an absence of *de facto* government control of exports of the merchandise under investigation, in accordance with the criteria identified in *Sparklers* and *Silicon Carbide.*[5] Sinosteel certified that its export prices are not set by, subject to the approval of, or in any way controlled by a government entity at any level and that

separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applied both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.''

[5] *See also Certain Circular Welded Carbon Quality Steel Line Pipe from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 74 FR 14514 (March 31, 2009) and accompanying Issues and Decision Memorandum at Comment 11 (where the Department granted a separate rate to a company owned by the State-owned Assets Supervision and Administration Commission of the State Council of the government of the PRC).

it has independent authority to negotiate and sign export contracts, by providing price negotiation documents for its first U.S. sale. *See, e.g.,* Sinosteel's Separate Rate Application, dated August 7, 2009, at Exhibit 1. Sinosteel also stated that it has the right to select its own management and to decide how profits will be distributed. *See* Sinosteel's Separate Rate Application Supplemental Questionnaire Response, dated September 25, 2009, at 3. Thus, the Department preliminarily determines that there is an absence of both *de jure* and *de facto* government control with respect to Sinosteel. Accordingly, the Department has preliminarily granted a separate rate to the State-Owned SR Applicant (*i.e.,* Sinosteel). *See* ''Preliminary Determination'' section below.

Companies Not Receiving a Separate Rate

In the *Initiation Notice,* the Department requested that all companies wishing to qualify for separate rate status in this investigation submit a separate rate status application. *See Initiation Notice.* Shenyang Yuanda submitted both a separate rate application and scope comments. In its scope comments, Shenyang Yuanda requested the Department to determine whether the product it exported (*i.e.,* steel connectors for aluminum curtains) to the United States during the POI was within the scope of the investigation. Specifically, Shenyang Yuanda stated that the only steel products that it ships to the United States are steel connectors, made from milled steel plate, that have the purpose of securing aluminum curtains to the walls of buildings. *See* Shenyang Yuanda's July 6, 2009, submission. We examined Shenyang Yuanda's submission, and found that Shenyang Yuanda's aluminum curtains are not merchandise under consideration, as they are not made of steel; we also found that Shenyang Yuanda's steel connectors are not merchandise under consideration because they are not grating. While Shenyang Yuanda submitted a separate rate application and scope comments, based on record evidence (*i.e.,* Shenyang Yuanda's separate rate application and scope comments), we have determined that Shenyang Yuanda is not an exporter of merchandise subject to this investigation. Therefore, the Department has determined that Shenyang Yuanda has not demonstrated its eligibility for separate rate status in this investigtation. As a result, the Department will not provide Shenyang Yuanda with a separate rate.

Margins for Separate Rate Recipients

Through the evidence in their applications, the Separate-Rate Applicants have demonstrated their eligibility for a separate rate, *see* the ''Separate Rates'' section above. Consistent with the Department's practice, we have established a margin for the Separate-Rate Applicants based on the rate we calculated for Ningbo Jiulong (the remaining mandatory respondent), excluding any rates that are zero, *de minimis,* or based entirely on adverse facts available (''AFA'').[6] The Separate-Rate Applicants are listed in the ''Suspension of Liquidation'' section of this notice.

Use of Facts Available and Adverse Facts Available

Section 776(a) of the Act provides that the Department shall apply ''facts otherwise available'' (''FA'') if (1) necessary information is not on the record, or (2) an interested party or any other person (A) withholds information that has been requested, (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified as provided by section 782(i) of the Act.

Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information. Such an adverse inference may include reliance on information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

PRC–Wide Entity

1. Non-Responsive Companies

On June 19, 2009, the Department requested Q&V information from the sixteen companies that Petitioners identified as potential exporters or producers of steel grating from the PRC. *See* Petition at Vol. 1, Exhibit 5. Additionally, the Department's *Initiation Notice* informed these companies of the requirements to respond to both the Department's Q&V questionnaire and the separate rate application in order to receive consideration for separate rate status. However, not all exporters/manufacturers responded to the Department's request for Q&V information.[7] Furthermore, not all exporters/manufacturers that submitted Q&V information also submitted a separate rate application.[8] Therefore, the Department preliminarily determines that there were exports of merchandise under review from PRC exporters/manufacturers that did not respond to the Department's Q&V questionnaire, and/or subsequently did not demonstrate their eligibility for separate rate status. As a result, the Department is treating these PRC exporters/manufacturers (''non-responsive companies'') as part of the PRC-wide entity.

2. Shanghai DAHE

As stated above, Shanghai DAHE informed the Department, on August 18, 2009, that it would no longer participate in the instant investigation and did not place any information (*e.g.,* Section A questionnaire response) on the record of this investigation. Because Shanghai DAHE decided to no longer participate in this investigation, Shanghai DAHE has failed to demonstrate that it operates free of government control and that it is entitled to a separate rate. Therefore, the Department preliminarily finds that Shanghai DAHE is part of the PRC-wide entity.

Application of Total Adverse Facts Available

As noted above, the Department has determined that Shanghai DAHE, and the non-responsive companies, are part of the PRC-wide entity. Pursuant to section 776(a) of the Act, the Department further finds that the PRC-wide entity failed to respond to the Department's questionnaires, withheld required information, and/or submitted information that cannot be verified, thus

[6] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 71 FR 77373, 77377 (December 26, 2006), unchanged in *Final Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances: Certain Polyester Staple Fiber from the People's Republic of China,* 72 FR 19690 (April 19, 2007), *see also* the ''Separate Rates'' section.

[7] As stated in the ''Background'' section above, of the sixteen Q&V questionnaires the Department sent to potential exporters identified in the Petition, the Department received seven timely responses, one of which reported no sales within the POI. The record indicates that all sixteen companies received the Department's questionnaires. *See* Respondent Selection Memo and ''Background'' section above.

[8] As stated in the ''Separate Rates'' section above, six exporters submitted a timely response to the Department's Q&V questionnaire with sales within the POI, but only four of these exporters submitted a separate rate application.

significantly impeding the proceeding. *See, e.g., Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Partial Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 70 FR 77121, 77128 (December 29, 2005), unchanged in *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof From the People's Republic of China,* 71 FR 29303 (May 22, 2006). Accordingly, the Department has preliminarily determined to base the PRC-wide entity's margin on facts otherwise available. *See* section 776(a) of the Act. Further, because the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with the Department's request for information, the Department preliminarily determines that, when selecting from among the facts otherwise available, an adverse inference is warranted for the PRC-wide entity pursuant to section 776(b) of the Act.

Selection of the Adverse Facts Available Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) provide that the Department may rely on information derived from (1) the petition, (2) a final determination in the investigation, (3) any previous review or determination, or (4) any information placed on the record. In selecting a rate for AFA, the Department selects a rate that is sufficiently adverse ''as to effectuate the purpose of the facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *See Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan,* 63 FR 8909, 8932 (February 23, 1998). Further, it is the Department's practice to select a rate that ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Brake Rotors from the People's Republic of China: Final Results and Partial Rescission of the Seventh Administrative Review; Final Results of the Eleventh New Shipper Review,* 70 FR 69937, 69939 (November 18, 2005).

It is the Department's practice to select, as AFA, the higher of the (a) highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. *See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon Quality Steel Products from the People's Republic of China,* 65 FR 34660 (May 31, 2000) and accompanying Issues and Decision Memorandum, at ''Facts Available.'' In the instant investigation, as AFA, we have preliminarily assigned to the PRC-wide entity, including Shanghai DAHE, the highest rate on the record of this proceeding, which in this case is the 145.18 percent margin from the Petition. *See Initiation Notice,* 74 FR at 30277. The Department preliminarily determines that this information is the most appropriate from the available sources to effectuate the purposes of AFA. The Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate AFA rate for the PRC-wide entity, including Shanghai DAHE.

The dumping margin for the PRC-wide entity applies to all entries of the merchandise under investigation except for entries of subject merchandise from the exporter/manufacturer combinations listed in the chart in the ''Preliminary Determination'' section below.

Corroboration of Information

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation as facts available, it must, to the extent practicable, corroborate that information from independent sources reasonably at its disposal. Secondary information is described as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning merchandise subject to this investigation, or any previous review under section 751 concerning the merchandise subject to this investigation.''[9] To ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value. Independent sources used to corroborate may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.[10]

The AFA rate that the Department used is from the Petition. Petitioners' methodology for calculating the United States price and NV in the Petition is discussed in the *Initiation Notice.* To corroborate the AFA margin that we have selected, we compared this margin to the margins we found for the respondent. We found that the margin of 145.18 percent has probative value because it is in the range of the model-specific margins that we found for the mandatory respondent, Ningbo Jiulong. *See* Memorandum to the File from Thomas Martin, through Robert Bolling, Program Manager, AD/CVD Operations, Office 4, and Abdelali Elouaradia, Director, AD/CVD Operations, Office 4: Certain Steel Grating from the People's Republic of China: Calculation Memorandum the Preliminary Determination: Ningbo Jiulong Machinery Manufacturing Co., Ltd., dated concurrently with this notice (''Calculation Memorandum''). Accordingly, we find that the rate of 145.18 percent is corroborated within the meaning of section 776(c) of the Act.

Date of Sale

19 CFR 351.401(i) states that, ''in identifying the date of sale of the merchandise under consideration or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the normal course of business.'' In *Allied Tube,* the Court of International Trade (''CIT'') noted that a ''party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to 'satisf(y)' the Department that 'a different date better reflects the date on which the exporter or producer establishes the material terms of sale.' '' *Allied Tube and Conduit Corp.* v. *United States,* 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (''*Allied Tube*''). Additionally, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR 351.401(i); *see also Allied Tube,* 132 F.

[9] *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China,* 73 FR 6479, 6481 (February 4, 2008), quoting SAA at 870.

[10] *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews,* 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part,* 62 FR 11825 (March 13, 1997).

Supp. 2d at 1090–1092. The date of sale is generally the date on which the parties agree upon all substantive terms of the sale. This normally includes the price, quantity, delivery terms and payment terms. *See Carbon and Alloy Steel Wire Rod From Trinidad and Tobago: Final Results of Antidumping Duty Administrative Review,* 72 FR 62824 (November 7, 2007) and accompanying Issues and Decision Memorandum at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey,* 65 FR 15123 (March 21, 2000) and accompanying Issues and Decision Memorandum at Comment 1.

Ningbo Jiulong reported that the date of sale was determined by the invoice issued by the affiliated importer to the unaffiliated United States customer. In this case, as the Department found no evidence contrary to Ningbo Jiulong's claims that invoice date was the appropriate date of sale, the Department used invoice date as the date of sale for this preliminary determination.

Fair Value Comparison

To determine whether sales of steel grating to the United States by Ningbo Jiulong were made at LTFV, we compared export price (''EP'') to NV, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice.

U.S. Price

In accordance with section 772(a) of the Act, for Ningbo Jiulong, we based the U.S. price of sales on EP because the first sale to unaffiliated purchasers was made prior to importation and the use of constructed export price was not otherwise warranted. In accordance with section 772(c) of the Act, we calculated EP for Ningbo Jiulong by deducting the following expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States: foreign movement expenses and foreign brokerage and handling expenses. For certain transactions, Ningbo Jiulong paid international freight to the United States using a market economy carrier. For these transactions, we also deducted the reported international freight expenses from the starting price (gross unit price) charged to the first unaffiliated customer in the United States.

We based these movement expenses on surrogate values where the service was purchased from a PRC company. For certain sales, for international freight, the Department used Ningbo Jiulong's reported expenses for its sales because Ningbo Juilong used a market economy freight carrier and paid for those expenses in a market economy currency. For details regarding our EP calculation, *see* Calculation Memorandum.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine NV using a FOP methodology if the merchandise is exported from an NME and the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. The Department bases NV on the FOP because the presence of government controls on various aspects of NMEs renders price comparisons and the calculation of production costs invalid under the Department's normal methodologies. *See, e.g., Preliminary Determination of Sales at Less than Fair Value, Affirmative Critical Circumstances, In Part, and Postponement of Final Determination: Certain Lined Paper Products from the People's Republic of China,* 71 FR 19695 (April 17, 2006), unchanged in *Notice of Final Determination of Sales at Less than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China,* 71 FR 53079 (September 8, 2006).

As the basis for NV, Ningbo Jiulong provided FOPs used in each stage for producing steel grating. Additionally, Ningbo Jiulong reported that it is an integrated producer, in conjunction with an affiliate, Jiulong Factory, in as far as Jiulong Factory produces the twisted bar used in the cross bars for steel grating. *See* Ningbo Jiulong's Section D response, dated September 22, 2009, at 2. Jiulong Factory provided the FOP information used in this production stage.

Consistent with section 773(c)(1)(B) of the Act, it is the Department's practice to value the FOPs that a respondent uses to produce the merchandise under consideration. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China,* 69 FR 70997 (December 8, 2004) (''*Shrimp from China*'') and accompanying Issues and Decision Memorandum at Comment 9(E). If the NME respondent is an integrated producer, we take into account the factors utilized in each stage of the production process. *See Shrimp from China.* In this case, we are valuing those inputs reported by both Ningbo Jiulong and its affiliate that produced twisted bar when calculating NV.

Factor Valuation Methodology

In accordance with section 773(c) of the Act, we calculated NV based on FOP data reported by Ningbo Jiulong. To calculate NV, we multiplied the reported per-unit factor-consumption rates by publicly available surrogate values (except as discussed below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. *See, e.g., Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty New Shipper Review,* 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China,* 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. As appropriate, we adjusted input prices by including freight costs to make them delivered prices. Specifically, we added to Indian import surrogate values a surrogate freight cost using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest seaport to the factory where appropriate. This adjustment is in accordance with the Court of Appeals for the Federal Circuit's decision in *Sigma Corp.* v. *United States,* 117 F.3d 1401, 1407–08 (Fed. Cir. 1997). A detailed description of all surrogate values used for Ningbo Jiulong and Jiulong Factory can be found in the Surrogate Value Memorandum.

For this preliminary determination, in accordance with the Department's practice, we used data from the Indian import statistics in the World Trade Atlas (''WTA''), and other publicly available Indian sources in order to calculate surrogate values for Ningbo Jiulong and Jiulong Factory's FOPs (direct materials, energy, and packing materials) and certain movement expenses. However, for low carbon steel wire rod input, we used price data from the Indian Joint Plant Committee. In selecting the best available information for valuing FOPs in accordance with section 773(c)(1) of the Act, the Department's practice is to select, to the extent practicable, surrogate values which are non-export average values, most contemporaneous with the POI, product-specific, and tax-exclusive. *See, e.g., Notice of Preliminary Determination of Sales at Less than Fair Value, Negative Preliminary Determination of Critical Circumstances and Postponement of Final*

Determination: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam, 69 FR 42672, 42682 (July 16, 2004), unchanged in *Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the Socialist Republic of Vietnam,* 69 FR 71005 (December 8, 2004). The record shows that data in the Indian Import Statistics, as well as those from the other Indian sources, are contemporaneous with the POI, product-specific, and tax-exclusive. *See* Surrogate Value Memorandum. In those instances where we could not obtain publicly available information contemporaneous to the POI with which to value factors, we adjusted the surrogate values using, where appropriate, the Indian Wholesale Price Index as published in the International Financial Statistics of the International Monetary Fund. *See* Surrogate Value Memorandum at Exhibit 2.

Furthermore, with regard to the Indian import-based surrogate values, we have disregarded import prices that we have reason to believe or suspect may be subsidized. We have reason to believe or suspect that prices of inputs from Indonesia, South Korea, and Thailand may have been subsidized. We have found in other proceedings that these countries maintain broadly available, non-industry-specific export subsidies and, therefore, it is reasonable to infer that all exports to all markets from these countries may be subsidized. *See Notice of Final Determination of Sales at Less than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers from the People's Republic of China,* 69 FR 20594 (April 16, 2004) and accompanying Issues and Decision Memorandum at Comment 7. Further, guided by the legislative history, it is the Department's practice not to conduct a formal investigation to ensure that such prices are not subsidized. *See* Omnibus Trade and Competitiveness Act of 1988, Conference Report to accompany H.R. Rep. 100–576 at 590 (1988) reprinted in 1988 U.S.C.C.A.N. 1547, 1623–24; *see also Coated Free Sheet Paper.* Rather, the Department bases its decision on information that is available to it at the time it makes its determination. *See Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value,* 73 FR 24552, 24559 (May 5, 2008), unchanged in *Polyethylene Terephthalate Film, Sheet, and Strip from the People's Republic of China: Final Determination of Sales at Less than Fair Value,* 73 FR 55039 (September 24, 2008) (''*PET Film from China''*). Therefore, we have not used prices from these countries in calculating the Indian import-based surrogate values. Additionally, we disregarded prices from NME countries. Finally, imports that were labeled as originating from an ''unspecified'' country were excluded from the average value, because the Department could not be certain that they were not from either an NME country or a country with general export subsidies. *See PET Film from China.*

For direct, indirect, and packing labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate as reported on Import Administration's home page, *http://ia.ita.doc.gov/wages/index.html,* ''Expected Wages Of Selected Non-Market Economy Countries, Expected Wage Calculation: 2007 GNI Data, Regression Analysis: 2007 GNI Data.'' The source of these wage-rate data on the Import Administration's Web site is 2006 and 2007 data in Chapter 5B of the International Labour Organization's Yearbook of Labour Statistics. Because this regression-based wage rate does not separate the labor rates into different skill levels or types of labor, we have applied the same wage rate to all skill levels and types of labor reported by the respondent. *See* Surrogate Value Memorandum at Exhibit 7.

We valued truck freight expenses using a per-unit average rate calculated from data on the infobanc Web site: *http://www.infobanc.com/logistics/logtruck.htm.* The logistics section of this Web site contains inland freight truck rates between many large Indian cities. The value is contemporaneous with the POI. *See* Surrogate Value Memorandum at Exhibit 10.

We valued electricity using price data for small, medium, and large industries, as published by the Central Electricity Authority of the Government of India in its publication titled Electricity Tariff & Duty and Average Rates of Electricity Supply in India, dated March 2008. These electricity rates represent actual country-wide, publicly available information on tax-exclusive electricity rates charged to industries in India. As the rates listed in this source became effective on a variety of different dates, we are not adjusting the average value for inflation. *See* Surrogate Value Memorandum at Exhibit 5.

Because water is essential to the production process (the welding process) of the merchandise under consideration, the Department considers water to be a direct material input, not overhead, and thus valued water with a surrogate value according to our practice. *See Final Determination of Sales at Less than Fair Value and Critical Circumstances: Certain Malleable Iron Pipe Fittings from the People's Republic of China,* 68 FR 61395 (October 28, 2003), and accompanying Issues and Decision Memorandum at Comment 11. The Department valued water using data from the Maharashtra Industrial Development Corporation (*http://midcindia.org*) as it includes a wide range of industrial water tariffs. This source provides 378 industrial water rates within the Maharashtra province for April 2009: 189 of the water rates were for the ''inside industrial areas'' usage category and 189 of the water rates were for the ''outside industrial areas'' usage category. *See* Surrogate Value Memorandum at Exhibit 6.

We valued brokerage and handling using a simple average of the brokerage and handling costs reported in public submissions filed in three antidumping duty cases. Specifically, we averaged the public brokerage and handling expenses reported by Navneet Publications (India) Ltd. in the 2007–2008 administrative review of certain lined paper products from India, Essar Steel Limited in the 2006–2007 antidumping duty administrative review of hot-rolled carbon steel flat products from India, and Himalaya International Ltd. in the 2005–2006 administrative review of certain preserved mushrooms from India. The Department adjusted the average brokerage and handling rate for inflation. *See* Surrogate Value Memorandum at Exhibit 9.

To value factory overhead, selling, general, and administrative expenses, and profit, we used the factory overhead, selling, general and administrative, and profit on data from two Indian producers of comparable merchandise: (1) Mekins Agro Products Limited (''Mekins''); and (2) Rama Steel Tubes Limited (''Rama''), for the fiscal year April 2007, through March 2008. Petitioners provided the Mekins financial statement. *See* Supplement to the AD Petition, at 10 and Exhibit S–8. Ningbo Jiulong submitted the financial statements of two producers of steel pipes, Rama and Bihar Tubes Limited (''Bihar''), maintaining that steel pipe is more comparable to steel grating because it consumes largely the same raw material (hot-rolled coil/strip), which is also welded. *See* Ningbo Jiulong's Submission dated November 2, 2009, ''Certain Steel Grating from the People's Republic of China—Surrogate Values for the Preliminary Determination'' (''Jiulong SV Submission'') at 2. We have determined

not to rely on the 2007–2008 financial statement of Bihar because it indicates that Bihar received ''Export Incentives'' under the Duty Entitlement Pass Book as ''Loans and Advances.'' [11] Consistent with the Department practice, we do not use financial statements of a company we have reason to believe or suspect may have received subsidies that the Department has found to be countervailable, because financial ratios derived from that company's financial statements do not constitute the best available information with which to value financial ratios.[12]

Mekins manufactures multiple products, such as wire decking, handling equipment, pallets, bins, trolleys, perforated sheets, wheels, agricultural implements, steel sheet and strip, pipe, tube, tire tubes and axles, hardware chemicals and paints. Rama manufactures steel pipe and tube, structural steel, PVC pipes and pipe fittings, and provides ''turn key'' project services (*i.e.,* project management and construction services). *See* Petitioners' November 10, 2009, Surrogate Value Rebuttal Comments at Exhibit 7. Petitioners state that the Mekins financial statement, which the Department used for this initiation, reflects the experience of a producer of merchandise with multiple-welded grids of steel bars for the support of loads and weight. *See* Petitioners' ''Comments on Surrogate Values,'' dated November 2, 2009; *see also* Petitioners' ''Surrogate Value Rebuttal Comments,'' dated November 9, 2009. *See* Surrogate Value Memorandum at Exhibit 8. We have determined to use the financial statements of both Mekins and Rama because both are producers of comparable merchandise with experiences comparable to Ningbo Jiulong.

For its hot-rolled steel input, Ningbo Jiulong reported that it used hot-rolled steel strip. *See* Ningbo Jiulong's October 16, 2009, submission at 3. On November 9, 2009, Petitioners argued that the description of Ningbo Jiulong's hot-rolled steel input can be either steel sheet or steel strip, and argued that the Department should value Ningbo Jiulong's hot rolled steel input using surrogate values for both sheet and strip. *See* Petitioners' November 9, 2009, submission at 2–5 and Petitioners' December 7, 2009, submission at 2–7. On December 11, 2009, Ningbo Jiulong contended that record evidence showed that its hot-rolled steel input is steel strip, and argued that the Department should apply a surrogate value that is specific to Ningbo Jiulong's inputs. *See* Ningbo Jiulong's comments dated December 11, 2009, at 3–4. Evidence placed on the record by Ningbo Jiulong (*i.e.,* purchase invoices) indicates that Ningbo Jiulong purchased steel strip that it used in the production of steel grating. *See* Ningbo Jiulong's November 18, 2009 submission at Exhibit 8. After examining the record, we have determined to use, for the preliminary determination, Ningbo Jiulong's reported steel strip as its hot-rolled steel input surrogate value, because the Department has no contrary evidence that Ningbo Jiulong used hot-rolled steel sheet or other hot-rolled steel as its hot-rolled steel input. However, at verification, we will examine this surrogate value to further analyze Ningbo Jiulong's hot-rolled steel input. *See* Surrogate Value Memorandum at 3.

To value low carbon steel wire rod, we used price data from the Indian Joint Plant Committee (''JPC''), which is a joint industry/government board that monitors Indian steel prices. These data are fully contemporaneous with the POI, and are specific to the reported inputs of the respondents. *See* Ningbo Jiulong's Section D Supplemental Questionnaire response, dated October 16, 2009, at Exhibit 3. Further, these data are publicly available, represent a broad market average, and we are able to calculate them on a tax-exclusive basis. *See* 19 CFR 351.408(c)(1). *See* Surrogate Value Memorandum at Exhibit 3.

To value the cost of galvanization services, we used a surrogate value from the JPC. *See* Surrogate Value Memorandum at Exhibit 4.

Currency Conversion

We made currency conversions into U.S. dollars, in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i)(1) of the Act, we intend to verify the information upon which we will rely in making our final determination.

Combination Rates

In the *Initiation Notice,* the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. *See Initiation Notice,* 74 FR at 30277. This practice is described in *Policy Bulletin 05.1,* available at *http://ia.ita.doc.gov/.*

Preliminary Determination

The Department preliminarily determines that the following dumping margins exist for the period October 2008 through March 2009:

Exporter	Producer	Weighted-average margin
Ningbo Jiulong Machinery Manufacturing Co., Ltd.	Ningbo Jiulong Machinery Manufacturing Co., Ltd.	14.36
Sinosteel Yantai Steel Grating Co., Ltd.	Sinosteel Yantai Steel Grating Co., Ltd.	14.36
Ningbo Haitian International Co., Ltd.	Ningbo Lihong Steel Grating Co., Ltd.	14.36
Yantai Xinke Steel Structure Co., Ltd.	Yantai Xinke Steel Structure Co., Ltd.	14.36
PRC-wide Entity (including Shanghai DAHE Grating Co., Ltd.)		145.18

Disclosure

We will disclose the calculations performed within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we will instruct U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of

[11] *See* Annual Report 2007–2008, Bihar, at Schedules H(B) and R(B)(10)(B) contained in Jiulong SV Submission at Exhibit 1a.

[12] *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Final Results And Rescission, In Part, of 2004/2005 Antidumping Duty Administrative and New Shipper Reviews,* 72 FR 19174 (April 17, 2007) and accompanying Issues and Decision Memorandum at Comment 1; *see also Commodity Matchbooks From India: Final Affirmative Countervailing Duty Determination,* 74 FR 54547, 54548 (October 22, 2009)

steel grating from the PRC as described in the ''Scope of Investigation'' section, entered, or withdrawn from warehouse, for consumption from on or after the date of publication of this notice in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds U.S. price, as indicated above.

Additionally, as the Department has determined in its *Certain Steel Grating from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination,* 74 FR 56796 (November 3, 2009) (''*CVD Prelim''*) that the product under investigation, exported and produced by Ningbo Jiulong, benefitted from an export subsidy we will instruct CBP to require an antidumping cash deposit or posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated above, minus the amount determined to constitute an export subsidy. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Carbazole Violet Pigment 23 from India,* 69 FR 67306, 67307 (November 17, 2004). Therefore, for merchandise under consideration exported and produced by Ningbo Jiulong entered or withdrawn from warehouse, for consumption on or after publication date of this preliminary determination, we will instruct CBP to require an antidumping duty cash deposit or the posting of a bond for each entry equal to the weighted-average margin indicated above adjusted for the export subsidy rate determined in the *CVD Prelim* (*i.e.,* Export Grant 2008, Foreign Trade Grant 2008, and Water Fund Refund/Exemption 2008). The adjusted cash deposit rate for Ningbo Jiulong is 14.12 percent.

Furthermore, in the *CVD Prelim,* Ningbo Jiulong's rate was assigned to the all-others rate as it was the only rate that was not zero, *de minimis* or based on total facts available. *See CVD Prelim,* 74 FR at 56804. Accordingly, as the countervailing duty rate for Sinosteel Yantai Steel Grating Co., Ltd., Ningbo Haitian International Co., Ltd., and Yantai Xinke Steel Structure Co., Ltd. is the all-others rate, which includes the countervailable export subsidies listed above, we will also instruct CBP to require an antidumping duty cash deposit or the posting of a bond for each entry equal to the weighted-average margin indicated above for these companies adjusted for the export subsidies determined in the *CVD Prelim.* The adjusted cash deposit rate for Sinosteel Yantai Steel Grating Co., Ltd., Ningbo Haitian International Co., Ltd., Yantai Xinke Steel Structure Co., Ltd. is 14.12 percent.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary affirmative determination of sales at LTFV. Section 735(b)(2) of the Act requires the ITC to make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of steel grating, or sales (or the likelihood of sales) for importation, of the merchandise under investigation within 45 days of our final determination.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than seven days after the date on which the final verification report is issued in this proceeding and rebuttal briefs limited to issues raised in case briefs and must be received no later than five days after the deadline date for case briefs. *See* 19 CFR 351.309(c)(i) and (d). A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes.

In accordance with section 774 of the Act, and if requested, we will hold a public hearing, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. If a request for a hearing is made, we intend to hold the hearing shortly after the deadline of submission of rebuttal briefs at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days after the date of publication of this notice. *See* 19 CFR 351.310(c). Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief and may make rebuttal presentations only on arguments included in that party's rebuttal brief.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: December 28, 2009.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E9–31414 Filed 1–5–10; 8:45 am]

BILLING CODE 3510–DS–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, January 6, 2010, 9:30 a.m.–11:30 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

Matter To Be Considered

Compliance Weekly Report—Commission Briefing.

The staff will brief the Commission on various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: December 28, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–31294 Filed 1–5–10; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, January 6, 2010, 9 a.m.–9:30 a.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

MATTERS TO BE CONSIDERED: 1. Pending Decisional Matters:

(a) Lead in Electronic Devices—Final Rule;

(b) Mandatory Recall Notice—Final Rule.

A live webcast of the Meeting can be viewed at *http://www.cpsc.gov/webcast/index.html.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

FOR MORE INFORMATION CONTACT: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: December 28, 2009.

Todd A. Stevenson,

Secretary.

[FR Doc. E9–31295 Filed 1–5–10; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13577–000]

FFP Qualified Hydro 17 LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

December 29, 2009.

On September 4, 2009, FFP Qualified Hydro 17 LLC filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Glover Wilkins Lock and Dam Project, located on the Tennessee-Tombigbee Waterway, in Monroe County, Mississippi. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following:

(1) A 35-ft by 150-ft-long power canal; (2) a 40-ft by 50-ft control building; (3) a new 3 MVA substation; (4) a 200-ft-long transmission line; (5) 100 feet of new access roads; and (6) appurtenant facilities. The proposed Glover Wilkins Lock and Dam Project would have an average annual generation of 10.5 gigawatt-hours.

Applicant Contact: Ramya Swaminathan, Free Flow Power Corporation, 33 Commercial Street, Gloucester, MA 01930.

FERC Contact: Allyson Conner, 202–502–6082.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13577–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–31327 Filed 1–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–28–000]

City of Banning, CA; Notice of Filing

December 29, 2009.

Take notice that on December 23, 2009, the City of Banning, California filed its seventh annual revision to its Transmission Revenue Balancing Account Adjustment, to become effective as of January 1, 2010, consistent with its Transmission Owner Tariff filed with the Federal Energy Regulatory Commission in Docket No. EL03–21, and the California Independent System Operator Corporation Electric Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 13, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–31320 Filed 1–5–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL10–5–000]

Public Service Company of Colorado; Notice of Filing

December 29, 2009.

Take notice that on November 23, 2009, Public Service Company of Colorado filed its response to the Federal Energy Regulatory Commission's (Commission) October 22, 2009 Order, *Western Systems Power Pool,* 129 FERC ¶ 61,055 (2009) (October 22 Order), to consider the justness and reasonableness of Public Service Company of Colorado's (PSCo) $15.16/kW/month demand charge under its Coordination Sales Tariff.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the

Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on January 5, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–31321 Filed 1–5–10; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0856; FRL–8802–9]

Propoxur; Receipt of Application for Emergency Exemption; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a public health exemption request from the Ohio Department of Agriculture to use the pesticide propoxur (CAS No. 114–26–1) to treat indoor residential single or multiple unit dwellings, apartments, hotels, motels, office buildings, modes of transportation, and commercial industrial buildings to control bed bugs (*Cimex lectularius*). The applicant proposes a use of a pesticide which was voluntarily canceled under section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and which poses a risk similar to the risk which was voluntarily canceled under section 6(f) of FIFRA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before January 21, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0856, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0856. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Princess Campbell, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8033; fax number: (703) 605–0781; e-mail address: *Campbell.Princess@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice*. EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Ohio Department of Agriculture (DOA) has requested the Administrator to issue a public health exemption for the use of propoxur on indoor residential single or multiple unit dwellings, apartments, hotels, motels, office buildings, modes of transportation, and commercial industrial buildings to control bed bugs. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that an emergency exemption is warranted because of the prevalence of control failures with other existing labeled insecticides, in part due to pyrethroid resistance in the bed bug population. Bed bugs are parasitic, blood-sucking insects that prefer humans as a host and tend to inhabit human dwellings. For several decades, pyrethroids have been used to manage the bed bug population in the United States. Since the late 1990s, bed bugs have begun making a comeback, largely due to their development of extremely high levels of resistance to pyrethroid insecticides. Thus, these parasitic insects have been growing rapidly and have re-emerged as a major pest in many towns and cities in Ohio. The ODA states that currently available insecticides are inadequate for the control of bed bugs and resulted in a crisis that poses grave economic concerns, quality of life issues, and potential health risks to the residents of the state. The ODA claims propoxur is one of the few insecticidal ingredients showing excellent activity against bed bugs and would provide an effective insecticide in a different chemical class for bed bug control.

The Applicant proposes to make applications year-round with a 14–day retreatment restriction. Three propoxur products will be used (all containing 1% propoxur):

- Prenbay 1% Oil Solution (EPA Reg. No. 655–546) manufactured by Prentiss Inc.
- Invader HPX (EPA Reg. No. 9444–186) manufactured by FMC Corp.
- Prescription Treatment Brand 250 Propoxur (EPA Reg. No. 499–501) manufactured by Whitmire Micro-gen Research Lab. Inc.

These products would be applied as a crack and crevice or spot treatment to indoor residential single or multiple unit dwellings, apartments, hotels, motels, office buildings, modes of transportation, and commercial industrial buildings. Application of the products would be applied in quantities sufficient to manage the bed bug infestation in Ohio.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a public health exemption proposing a use of a pesticide which was voluntarily canceled under section 6(f) of FIFRA, and which poses a risk similar to the risk which was voluntarily canceled under section 6(f) of FIFRA.

The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the public health exemption requested by the ODA.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 24, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–31395 Filed 1–5–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0879; FRL–8806–4]

Exposure Modeling Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Cancellation and Rescheduling of meeting.

SUMMARY: This notice announces that the Exposure Modeling Public Meeting (EMPM), scheduled for January 26, 2010, has been cancelled and that the next EMPM will be held in July 2010.

DATES: The next EMPM meeting will be held in July 2010. The specific date of the next meeting will be announced in a February 2010 issue of the **Federal Register**.

ADDRESSES: The meeting will be held at EPA's, Office of Pesticide Programs (OPP), One Potomac Yard (South Bldg.), 1st Floor South Conference Room, 2777 S. Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Chuck Peck, Environmental Fate and Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8064; fax number: (703) 305–6309; e-mail address: *peck.charles@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA), the Federal Food, Drug and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket ID number EPA–HQ–OPP–2009–0879. As the meeting has been indefinitely postponed, no materials will be posted on the docket. Publicly available docket materials for future EMPM conferences are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

II. Background

The purpose of the Exposure Modeling Public Meetings is to share new information among stakeholders through presentations on current issues in modeling pesticide fate, transport, and exposure in support of pesticide exposure assessment in a regulatory context. The meetings began in 2002, with typically 5 to 10 presentations made at each meeting on topics such as assessing risks to non-target terrestrial invertebrates, drinking water well contamination, plans for national monitoring of streams and ground water, and examination of non-agricultural pesticide use by means of GIS coverages. Meeting dates and abstract requests are announced in advance through the ''empmlist'' forum on the LYRIS list server at *https://lists.epa.gov/read/all_forums/* as well as through notice in the **Federal Register**. At the October 2009 meeting, EPA proposed to modify the frequency of the meetings from three to two meetings per year, to ensure a full agenda and the most productive use of the meeting time. Because of the timing of the January 2010 meeting and proposed presentations, EPA is cancelling that meeting and will hold the next EMPM in July 2010. The specific date of the next meeting will be announced in a February 2010 issue of the **Federal Register**.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in future meetings to the person listed under **FOR FURTHER INFORMATION CONTACT**. Do not submit any information in your request that is considered CBI. Requests to participate in future meetings must be received on or before January 21, 2010.

IV. Tentative Topics for the Meeting

Presentations submitted for the January 2010 EMPM will be tentatively scheduled for the July 2010 EMPM, provided the presenters are available.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pest.

Dated: December 23, 2009.

D. J. Brady,

Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 2010–31094 Filed 01–05–10; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0777; FRL–8806–3]

Maneb; Notice of Receipt of a Request to Voluntarily Cancel a Pesticide Registration of a Certain Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily cancel their registration of a product containing the pesticide maneb. The request would terminate the last maneb technical product registered for use in the United States. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws their request within this period. Upon acceptance of this request, any sale, distribution, or use of the product listed in this notice will be permitted only if the sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before February 5, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0777, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0777. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which

means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT:

Barbara Briscoe, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8177; fax number: (703) 308–8090; e-mail address: *briscoe.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel and/or Amend Registrations to Delete Uses

This notice announces receipt by EPA of a request from Drexel Chemical Company to cancel a maneb product registration. In a letter dated November 15, 2009, and an electronic mail message dated December 15, 2009, Drexel Chemical Company requested that EPA cancel the product registration of the pesticide product identified in Table 1 of Unit III.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to cancel a maneb product registration. The affected product and the registrant making the request are identified in Table 1 and Table 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrant requests a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The maneb registrant has requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed request.

Unless a request is withdrawn by the registrant on or before 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registrations. Once this cancellation is effective there will be no other registered maneb manufacturing use products.

TABLE 1.—MANEB PRODUCT REGISTRATION WITH PENDING REQUESTS FOR CANCELLATION

Registration Number	Product Name	Company
019713-00377	Maneb Technical	Drexel Chemical Company

TABLE 2.—REGISTRANT REQUESTING VOLUNTARY CANCELLATION

EPA Company Number	Company Name and Address
019713-00377	Drexel Chemical Company 1700 Channel Avenue P.O. Box 13327 Memphis, TN 38113

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of the request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve the request.

V. Procedures for Withdrawal of Voluntary Cancellation

Registrants who choose to withdraw a request for cancellation must submit the withdrawal, in writing, to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before February 5, 2010. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. EPA anticipates allowing sale, distribution, and use in the cancellation order as described in Unit III.:

1. The registrant will be allowed to sell or distribute existing stocks of the maneb technical product identified in Table 1 of Unit III., until February 10, 2010.

2. The registrant will be allowed to use existing stocks to formulate end-use products from the maneb technical product identified in Table 1 of Unit III., until March 10, 2010.

3. Persons other than the registrant may use the maneb end use products until exhausted. Any use of existing stocks must be in a manner consistent with the previously approved labeling for that product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 23, 2009

Richard P. Keigwin, Jr.,

Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. E9–31282 Filed 1–5–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2007-1026; FRL–8804–5]

Bacillus subtilis; Registration Review Proposed Decision; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of EPA's proposed registration review decision for the pesticide *Bacillus subtilis* (case 6012) and opens a public comment period on the proposed decision. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

DATES: Comments must be received on or before February 28, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2007–1026 by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket identification (ID) number EPA–HQ–OPP–2007–1026. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: *For pesticide specific information, contact*: The Regulatory Action Leader (RAL) Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8077; fax number: (703) 308–7026; e-mail address: *cerrelli.susanne@epa.gov*.

For general information on the registration review program, contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5026; fax number: (703) 308–8090; e-mail address: *costello.kevin@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm workers; agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the regulatory action leader listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed registration review decision *Bacillus subtilis* (case 6012). The *Bacillus subtilis* case consists of four strains: Strain GB03; Strain MBI 600; Strain QST 713; and var. *amyloliquefaciens* Strain FZB24. All four strains occur ubiquitously in the environment:

Bacillus subtilis strain GB03 is used to prevent, control and suppress plant disease on barley, berries, bulb vegetables, cole crops, cotton, cucurbits, fruiting vegetables, herbs, leafy crops, legumes, ornamental plants and cuttings, peanuts, root/tuber and corm vegetables, soybeans, tomatoes, trees, tropical plants, turf, and wheat. *Bacillus subtilis* strain GB03 is applied as a irrigation application, pre-plant soak, overhead spray, soil drench, seed dressing, tank mix, or hydroponic system treatment;

Bacillus subtilis strain MBI 600 is used to suppress disease organisms such as *Botrytis*, *Alternaria*, *Rhizoctonia*, and *Fusarium* and is also used to promote more effective nodulation by nitrogen-fixing bacteria to improve yields. It is used as a seed and in-furrow treatment on cotton, seed and pod vegetables, peanuts, soybeans, alfalfa, forage and turf grasses, wheat, barley, corn, and canola. It is also used in greenhouses to treat peat moss and soil intended for seeding, potting, or transplanting non-bearing fruit and vegetable seedlings and as a foliar spray on asparagus, cole crops, bulb vegetables, berry crops, cucurbits, flowers, bedding plants, ornamentals, tropical plants, fruiting vegetables, grape, leafy vegetables, pome fruit, stone fruit, strawberry, tuber/root and corm vegetables, turf, sod, lawns, trees, and shrubs;

Bacillus subtilis strain QST 713 is used to prevent or reduce several types of fungal and bacterial pests on artichoke, asparagus, avocado, beans, beets, berries, brassica crops, bulb vegetables, celery, cereal grains, citrus, coffee, corn, cucurbits, beans, eggplant, grapes, herbs/spices, hops, kiwi, kohlrabi, leafy vegetables, legumes, melons, oil seed crops, oil palm, okra, peanuts, peppers, pome fruit, rice, root/tuber crops, silage crops, stone fruits, tomatoes, tree nuts, tropical fruits, field roses, forestry seedlings, lawns, ornamental flowering plants, ornamental foliage plants, ornamental trees and shrubs, seed production crops, sod, tobacco, and turf;

Bacillus subtilis var. amyloliquefaciens strain FZB24 is used for plant strengthening, enhancing growth, increasing yields and suppressing soil-borne fungal diseases such as *Rhizoctonia* and *Fusarium* as a dip for seedlings, transplants, plugs, tubers, bulbs, corms, cuttings and roots of ornamentals, shrubs and trees, and as a spray over furrows for ornamentals, shrubs, trees, turf, vegetables, herbs and spices, and other crops. It is also incorporated into soils, soil-less growing media and mushroom spawn media and as a drench for interiorscapes and potted orchids and ferns.

The registration review docket for a pesticide includes earlier documents related to the registration review of the case. For example, the review opened with the posting of a Summary Document, containing a Preliminary Work Plan for public comment. A Final Work Plan was posted to the docket following public comment on the initial docket.

The documents in the docket describe EPA's rationales for conducting additional risk assessments for the registration review of *Bacillus subtilis*, as well as the Agency's subsequent risk findings. This proposed registration review decision is supported by the rationales included in those documents.

Following public comment, the Agency will issue a final registration review decision for products containing *Bacillus subtilis*.

The registration review program is being conducted under congressionally mandated time frames. EPA recognizes the need both to make timely decisions

and to involve the public. Section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, required EPA to establish, by regulation, procedures for reviewing pesticide registrations, originally with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006, became effective in October 2006, and appears at 40 CFR part 155, subpart C. The Pesticide Registration Improvement Act of 2003 (PRIA) was amended and extended in September 2007. FIFRA, as amended by PRIA in 2007, requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60–day public comment period on all proposed registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision. All comments should be submitted using the methods in **ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for *Bacillus subtilis*. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a ''Response to Comments Memorandum'' in the docket. The final registration review decision will explain the effect that any comments had on the decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: *http://www.epa.gov/oppsrrd1/registration_review*. Links to earlier documents related to the registration review of this pesticide are provided at: *http:/www.epa.gov/oppsrrd1/registration_review/bacillus_subtilis/index.htm*.

B. What is the Agency's Authority for Taking this Action?

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provide authority for this action.

List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests, *Bacillus subtilis*.

Dated: December 23, 2009.

Keith D. Matthews,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. E9–31283 Filed 1–5–10; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0045; FRL–8801–5]

Notice of Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the Agency's receipt of several initial filings of pesticide petitions proposing the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before February 5, 2010.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and the pesticide petition number (PP) for the petition of interest as shown in the body of this document, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to the docket ID number and the pesticide petition number of interest as shown in the body of this document. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: A contact person, with telephone number and e-mail address, is listed at the end of each pesticide petition summary. You may also reach each contact person by mail at Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have a typical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What Action is the Agency Taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or modification of regulations in 40 CFR part 174 or part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that the pesticide petitions described in this notice contain the data or information prescribed in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this notice, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available on-line at *http://www.regulations.gov*.

As specified in FFDCA section 408(d)(3), (21 U.S.C. 346a(d)(3)), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

New Tolerances

1. *PPs 2E6426 and 9E7625.* (EPA–HQ–OPP–2009–0843). The Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide linuron, (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea), and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on pea, dry at 0.07 parts per million (ppm); parsley, leaves at 2.5 ppm; and parsley, dried leaves at 7.0 ppm for *PP 9E7625*; and horseradish at 0.050 ppm for *PP 2E6426*. Adequate enforcement methods are available for the determination of linuron in plant and animal commodities. The Pesticide Analytical Manual (PAM) Vol. II, lists a colorimetric method (Method I, Bleidner et. al.,) and a paper chromatographic method (Method II). Residues of diuron may interfere in Method I. A modified version of Method I, which includes a cellulose column step to separate linuron from diuron, is currently the preferred method for the enforcement of tolerances. Both of these methods determine linuron and all metabolites hydrolyzable to 3,4-dichloroaniline and have limits of detection of 0.05 ppm. Contact: Laura Nollen, (703) 305–7390; *nollen.laura@epa.gov*.

2. *PP 9E7573.* (EPA–HQ–OPP–2009–0823). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide difenoconazole, 1-[2-[2-chloro-4-(4-chlorophenoxy)phenyl]-4-methyl-1,3-dioxolan-2-ylmethyl]-1H-1,2,4-triazole, in or on mango at 0.09 parts per million (ppm) and waxapple at 1.5 ppm. The practical analytical method (AG-575B) was submitted for detecting and measuring levels of difenoconazole in or on food with a limit of quantification (LOQ) that allows monitoring of food with residues at or above the levels set in the proposed tolerances. Method REM 147.08 is also available for enforcement method, for the determination of residues of difenoconazole in crops. Residues are qualified by liquid chromatography/mass spectrometry/mass spectrometry (LC/MS/MS). Contact: Rosemary Kearns, (703) 305–5611; *kearns.rosemary@epa.gov*.

3. *PP 9E7577*. (EPA–HQ–OPP–2009–0797). The Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540, in cooperation with Canyon Group LLC., c/o Gowan Company, 370 South Main St., Yuma, AZ 85364, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide halosulfuron-methyl, methyl 3-chloro-5-[[[[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonyl]amino]sulfonyl]-1-methyl-1 H-pyrazole-4-carboxylate, and its metabolites and degradates (compliance with the tolerance level specified is to be determined by measuring only those halosulfuron-methyl residues convertible to 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid, expressed as the stoichiometric equivalent of halosulfuron-methyl) in or on pea and bean, succulent shelled, subgroup 6B; pea and bean, dried shelled, except soybean, subgroup 6C; vegetables, tuberous and corm, subgroup 1C; bushberry, subgroup 13-07B; apple; rhubarb; and okra at 0.05 ppm. A practical analytical method, gas chromatography with a nitrogen-specific detector, is available for enforcement purposes. The limit of detection is 0.003 ppm. Contact: Sidney Jackson, (703) 305–7610; *jackson.sidney@epa.gov*.

4. *PPs 9E7588 and 9F7589*. (EPA–HQ–OPP–2009–0636). Bayer CropScience LP., 2 T.W. Alexander Dr., Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide indaziflam, N-[(1R,2S)-2,3-dihydro-2,6-dimethyl-1H-inden-1-yl-1,3,5-triazine-2,4-diamine]-6-(1-fluoroethyl)] and its fluoroethyl-indaziflam metabolite, in or on fruit, pome, group 11; fruit, citrus, group 10; fruit, stone, group 12; nut, tree, group 14; pistachio; grape; and olive at 0.01 ppm; almond, hulls at 0.2 ppm *PP 9F7589*; and the import tolerance for sugarcane, sugar, refined at 0.01 ppm PP *9E7588*. Indaziflam residues are quantified in raw agricultural commodities by high pressure liquid chromatography/triple stage quadrupole mass spectrometry (LC/MS/MS) using the stable isotopically labeled analytes as internal standards. The LOQ of each analyte was 0.005 ppm for all commodities. Contact: Beth Benbow, (703) 347–8072; *benbow.bethany@epa.gov*.

5. *PP 9E7604*. (EPA–HQ–OPP–2009–0813). Interregional Research Project No. 4, 500 College Road East, Suite 201W, Princeton, NJ, 08540–6635, in cooperation with Bayer CropScience, Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide glufosinate-ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-monoammonium salt) and its metabolites, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents, in or on corn, sweet, kernel plus cob with husks removed at 0.2 ppm; corn, sweet, forage at 4.0 ppm; and corn, sweet, stover at 6.0 ppm. The enforcement analytical method utilizes gas chromatography for detecting and measuring levels of glufosinate-ammonium and its metabolites with a general limit of quantification of 0.05 ppm. This method allows detection of residues at or above the proposed tolerances. Contact: Sidney Jackson, (703) 305–7610; *jackson.sidney@epa.gov*.

6. *PP 9E7607*. (EPA–HQ–OPP–2009–0814). The Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540, in cooperation with Syngenta Crop Protection, Inc., 410 Swing Rd., Greensboro, NC 27419, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide, S-metolachlor,S-2-chloro-N-(2-ethyl-6-methylphenyl)-N-(2-methoxy-1-methylethyl) acetamide, its R-enantiomer, and its metabolites, determined as the derivatives, 2-[(2-ethyl-6-methylphenyl)amino]-1-propanol and 4-(2-ethyl-6-methylphenyl)-2-hydroxy-5-methyl-3-morpholinone, each expressed as the parent compound, in or on carrot at 0.3 ppm; cucumber, okra, sesame seed, and sorghum sweet, at 0.1 ppm; *Brassica,* leafy greens, subgroup 5B, and turnip, greens at 1.2 ppm; melon, subgroup 9A, and caneberry, subgroup 13-07A at 0.08 ppm; blueberry, lowbush at 1.4 ppm; bushberry, subgroup 13-07B at 0.15 ppm; onion, bulb, subgroup 3-07A at 0.1 ppm; and onion, green, subgroup 3-07B at 2.0 ppm. The Pesticide Analytical Manual (PAM) Vol. II, Pesticide Regulation 180.368 lists a GC/NPD method (Method 1) for determining residues in/on plants and a gas chromatography/mass spectrum detector (GC/MSD) method for determining residues in livestock commodities. These methods determine residues of S-metolachlor and its metabolites as either CGA-37913 or CGA-49751 following acid hydrolysis. The LOQ for the method is 0.03 ppm for CGA-37913 and 0.05 ppm for CGA-49751. Syngenta has also developed a chiral specific analytical method to allow for the determination of residues that are specific to S-metolachlor. It is this chiral specific method that Syngenta and IR-4 proposes for future use as the analytical enforcement method in support of these requested tolerances. Syngenta No. 1848-01 was used in several of the studies in this petition to analyze agricultural commodities. The latter chiral specific method is the same as the updated tolerance enforcement method, except that chiral chromatography and LC/MS/MS are used to separate and quantitate the hydrolysis products SYN-506357 (s-configured enantiomer of CGA-37913) and SYN-508500 (s-configured enantiomer of CGA-49751). Contact: Sidney Jackson, (703) 305–7610; *jackson.sidney@epa.gov*.

7. *PP 9E7611*. (EPA–HQ–OPP–2009–0774). The Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540, in cooperation with Syngenta Crop Protection, Inc., 410 Swing Rd., Greensboro, NC 27419, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide chlorothalonil (tetrachloroisophthalonitrile) and its metabolite 4-hydroxy-2,5,6-trichloroisophthalonitrile, in or on berry, low growing subgroup 13-07G at 0.01 ppm; bushberry subgroup 13-07B at 1 ppm; onion, bulb, subgroup 3-07A at 0.5 ppm; and onion, green, subgroup 3-07B at 5 ppm. An adequate residue analytical method (gas chromatography) is available for enforcement purposes. The method is listed in the PAM Vol. II. Contact: Sidney Jackson, (703) 305–7610; *jackson.sidney@epa.gov*.

8. *PP 9E7612*. (EPA–HQ–OPP–2009–0775). The Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide flutolanil, *N*-(3-(1-methylethoxy)phenyl)-2-(trifluoromethyl)benzamide and its metabolites converted to 2-(trifluoromethyl) benzoic acid and calculated as flutolanil in or on ginseng at 3.5 ppm; vegetable, *Brassica*, leafy, group 5 at 0.11 ppm; and turnip, greens at 0.11 ppm. Residues of flutolanil and M-4 are extracted from macerated samples with acetone or a mixture of methanol and water. For cabbage and ginseng, an aliquot of the extract is diluted with water and analyzed using high performance liquid chromatography-mass spectrometry/mass spectrometry (HPLC-MS/MS). For broccoli and mustard greens, the acetone extract is diluted with water and the residues are partitioned into a mixture of ethyl acetate and

dichloromethane. This solvent is dispelled and the residue is reconstituted in acetone for purification through Florisil. The purified eluent is taken to dryness and the residues are reconstituted in a mixture of acetonitrile and water. Residues of flutolanil and M-4 are chromatographed and quantified using an HPLC–MS/MS. The LOQ is 0.05 ppm for each flutolanil and M-4. Contact: Laura Nollen, (703) 305–7390; *nollen.laura@epa.gov*.

9. *PP 9E7615*. (EPA–HQ–OPP–2009–0801). The Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide cyazofamid, 4-chloro-2-cyano-*N,N*-dimethyl-5-(4-methylphenyl)-1H-imidazole-1-sulfonamide and its metabolite CCIM, 4-chloro-5-(4-methylphenyl)-1H-imidazole-2-carbonitrile, expressed as cyazofamid, in or on *Brassica*, head and stem, subgroup 5A at 1.2 ppm; *Brassica*, leafy greens, subgroup 5B at 12.0 ppm; turnip, greens at 12.0 ppm; spinach at 9.0 ppm; and hops at 10.0 ppm. Residues of cyazofamid and CCIM were extracted from samples (5 g. for broccoli, cabbage, mustard greens & spinach; 1 g. for hops) with acetonitrile. The combined extracts were partitioned with hexane and then reduced to 1-2 mL. The residues were dissolved in 20% acetonitrile/water and passed through a Nexus or Strat-X Polymeric solid phase extraction column (SPE). The residues were eluted with 60/40 acetonitrile/water and then diluted in 50/50 acetonitrile/water. The samples were quantitated by liquid chromatography (LC)/MS/MS. Contact: Laura Nollen, (703) 305–7390; *nollen.laura@epa.gov*.

10. *PPs 8F7358 and 8F7463*. (EPA–HQ–OPP–2009–0364). Bayer CropScience, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709, proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide fluopyram (N-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl]-2-(trifluoromethyl)benzamide) in or on grape at 2.0 ppm; strawberry at 2.0 ppm; and tomato at 1.0 ppm for (*PP 8F7358*); and alfalfa; forage at 0.25 ppm; alfalfa; hay at 0.80 ppm; almond; hulls at 8.0 ppm; apple; wet pomace at 2.5 ppm; artichoke at 2.0 ppm; banana at 1.0 ppm; beet; sugar; roots at 0.10 ppm; berry; lowgrowing; subgroup 13-07G at 2.0 ppm; *Brassica*; head and stem; subgroup 5A at 3.0 ppm; *Brassica*; leafy greens; subgroup 5B at 35 ppm; bushberries; subgroup 13-07B at 10 ppm; caneberries; subgroup 13-07A at 5.0 ppm; citrus; oil at 10 ppm; corn; sweet; kernel plus cob with husk removed at 0.10 ppm; cotton; gin byproducts at 0.05 ppm; cotton; undelinted seed at 0.10 ppm; fruit; citrus; group 10 at 1.0 ppm; fruit; pome; group 11 at 1.0 ppm; fruit; small; vine; climbing; except fuzzy kiwifruit; subgroup 13-07F at 2.0 ppm; fruit; stone; group 12 at 2.0 ppm; grain; cereal; forage; fodder and straw; group 16; except rice; forage at 8.0 ppm; grain; cereal; forage; fodder and straw; group 16; except rice; hay; straw and stover at 14 ppm; grain; cereal; forage; fodder and straw; group 16; except rice; aspirated fractions at 50 ppm; grain; cereal; group 15; except rice and sweet corn at 3.0 ppm; grape; raisin at 3.5 ppm; grass; forage; fodder and hay; group 17; forage at 80 ppm; grass; forage; fodder and hay; group 17; hay at 30 ppm; herbs; subgroup 19A; fresh at 50 ppm; herbs; subgroup 19A; dried at 260 ppm; hop; dried cones at 100 ppm; nut; tree; group (including pistachio) 14 at 0.05 ppm; okra at 8.0 ppm; oilseed; group 20; except cotton at 5.0 ppm; onion; bulb; subgroup 3-07A at 0.30 ppm; onion; green; subgroup 3-07B at 20 ppm; peanut at 0.05 ppm; peanut; hay at 50 ppm; pepper; non-bell at 8.0 ppm; potato; processed potato waste at 0.15 ppm; soybean; aspirated fractions at 70 ppm; soybean; forage at 8.0 ppm; soybean; hay at 30 ppm; soybean; hulls at 0.40 ppm; soybean; seed at 0.30 ppm; spices; except black pepper; subgroup 19B at 100 ppm; vegetable; cucurbit; group 9 at 1.0 ppm; vegetable; foliage of legume; except soybean; subgroup 7A; forage at 30 ppm; vegetable; foliage of legume; except soybean; subgroup 7A; hay at 75 ppm; vegetable; foliage of legume; except soybean; subgroup 7A; vines at 16 ppm; vegetable; fruiting; except non-bell pepper; group 8 at 1.0 ppm; vegetable; leafy; except *Brassica*; group 4 at 35 ppm; vegetable; leaves of root and tuber; group 2 at 30 ppm; vegetable; legume; edible podded; subgroup 6A at 2.0 ppm; vegetable; legume; succulent shelled; subgroup 6B at 0.20 ppm; vegetable; pea and bean; dried shelled (except soybean); subgroup 6C at 0.50 ppm; vegetable; root and tuber; except sugarbeet; subgroup 1B at 0.50 ppm; and vegetable; tuberous and corm; subgroup 1C at 0.05 ppm.

Furthermore, Bayer CropScience proposes to establish a tolerance in 40 CFR part 180 for residues of the fungicide fluopyram (N-[2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]ethyl]-2-(trifluoromethyl)benzamide) and its metabolite 2-(trifluoro methyl) benzamide, expressed in parent equivalents in/on the animal commodities cattle; fat at 0.10 ppm; cattle; meat at 0.10 ppm; cattle; meat byproducts; except liver at 0.10 ppm; cattle; liver at 1.2 ppm; eggs at 0.1 ppm; goat; fat at 0.10 ppm; goat; meat at 0.10 ppm; goat; meat byproducts; except liver at 0.10 ppm; goat; liver at 1.2 ppm; hog; fat at 0.01 ppm; hog; meat at 0.01 ppm; hog; meat byproducts; except liver at 0.01 ppm; hog; liver at 0.15 ppm; horse; fat at 0.10 ppm; horse; meat at 0.10 ppm; horse; meat byproducts; except liver at 0.10 ppm; horse; liver at 1.2 ppm; milk at 1.2 ppm; poultry; fat at 0.05 ppm; poultry; meat at 0.03 ppm; poultry; meat byproducts at 0.20 ppm; sheep; fat at 0.10 ppm; sheep; meat at 0.10 ppm; sheep; meat byproducts; except liver at 0.10 ppm; and sheep; liver at 1.2 ppm for (*P 8F7463*).

Fluopyram was determined to be the only analyte required for analysis based on the metabolic profile in plants, the short pre-harvest intervals analyzed, and results from preliminary residues trials in Europe. The analytical method involves, solvent extraction, filtration, and addition of an isotopically labeled internal standard followed by solid phase extraction. Quantitation is by high performance liquid chromatography-electrospray ionization/tandem mass spectrometry (LC/MS/MS). Contact: Shaja B. Joyner, (703) 308–3194; *joyner.shaja@epa.gov*.

11. *PP 8F7509*. (EPA–HQ–OPP–2009–0796). Valent U.S.A. Corporation, 1600 Riviera Ave., Suite 200, Walnut Creek, CA, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide bispyribac-sodium; benzoic acid; 2,6-bis-((4,6-dimethoxy-2-pyrimidinyl)oxy)-, sodium salt; and its des-methyl metabolite, sodium 2-(4,6-dimethoxypyrimidin-2-yl)oxy-6-(4-hydroxy-6-methoxypyrimidin-2-yl) benzoate in or on freshwater fish tissue at 0.01 ppm. Practical analytical methods for detecting and measuring levels of bispyribac-sodium and its metabolites have been developed and validated in/on all appropriate plant and animal matrices. An analytical method for detecting bispyribac-sodium and its des methyl metabolite (KIH 2023) in fish tissue has been submitted with this petition. The LOQ of bispyribac-sodium and the metabolite in the analytical method for fish tissue is 10 ppb (0.01 ppm); which will allow monitoring for residues at the levels proposed for the tolerances. Contact: Hope Johnson, (703) 305–5410; *johnson.hope@epa.gov*.

12. *PP 9F7560*. (EPA–HQ–OPP–2009–0717). K-I CHEMICAL U.S.A., Inc., c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5126, proposes to establish a tolerance in 40

CFR part 180 for residues of the herbicide pyroxasulfone, 3-[(5-(difluoromethoxy)-1-methyl-3(trifluoromethyl) pyrazole-4-ylmethylsulfonyl]-4,5-dihydro-5,5-dimethyl-1,2-oxazole and its major metabolites M-1,5-difluoromethoxy-1-methyl-3-trifluoromethyl-1H-pyrazol-4-ylmethanesulfonic acid, M-3,5-difluoromethoxy-1-methyl-3-trifluoromethyl-1H-pyrazol-4-carboxylic acid, and M-25, (5-difluoromethoxy-3-trifluoromethyl-1H-pyrazol-4-yl)methanesulfonic acid in or on field corn kernel at 0.01 ppm; field corn forage at 0.15 ppm; field corn stover at 0.15 ppm; field corn meal at 0.01 ppm; field corn grits at 0.01 ppm; field corn flour at 0.01 ppm; field corn starch at 0.01 ppm; field corn oil (wet and dry milled) at 0.01 ppm; sweet corn ears at 0.02 ppm; sweet corn forage at 0.15 ppm; sweet corn stover at 0.15 ppm; wheat grain at 0.02 ppm; wheat forage at 0.2 ppm; wheat straw at 0.2 ppm; soybean seed at 0.05 ppm; soybean forage at 1.0 ppm; soybean hay at 2.0 ppm; soybean meal at 0.05 ppm; soybean hulls at 0.02 ppm; and soybean refined oils at 0.01 ppm. Practical analytical methodology has been submitted for detecting levels of pyroxasulfone and its major metabolites (M-1, M-3, and M-25) based upon extraction of matrices with acetonitrile or aqueous methanol followed by various cleanup steps depending on the matrix and analyte. Analysis was performed using LC/MS/MS. Contact: Michael Walsh, (703) 308–2972; *walsh.michael@epa.gov*.

13. *PP 9F7582*. (EPA–HQ–OPP–2009–0737). Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419, proposes to establish a tolerance in 40 CFR part 180 for residues of the insecticide thiamethoxam (3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-N-nitro-4H-1,3,5-oxadiazin-4-imine) (CAS Reg. No. 153719–23–4) and its metabolite [N-(2-chloro-thiazol-5-ylmethyl)-N'-methyl-N'-nitro-guanidine in or on onion, dry bulb at 0.03 ppm. Syngenta Crop Protection, Inc., has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on raw agricultural commodities. This method is based on crop specific clean-up procedures and determination by liquid chromatography with either ultraviolet (UV) or mass spectrometry (MS) detections. The limit of detection (LOD) for each analyte of this method is 1.25 ng injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the limit of quantification (LOQ) is 0.005 ppm for milk and juices; and 0.01 ppm for all other substrates. Contact: Julie Chao, (703) 308–8735; *chao.julie@epa.gov*.

14. *PP 9F7624*. (EPA–HQ–OPP–2009–0833). Syngenta Crop Protection, Inc., PO Box 18300, Greensboro, NC 27419–8300, proposes to establish a tolerance in 40 CFR part 180 for residues of the herbicide fluazifop-p-butyl in or on banana and plantains at 0.01 ppm; citrus (whole fruit), citrus (oil), and citrus (juice) at 0.05 ppm; citrus (dried pulp) at 0.40 ppm; grapes at 0.01 ppm; sugarbeet (root) at 0.25 ppm; sugarbeet (top) at 1.5 ppm; sugarbeet (dried pulp) at 1.0 ppm; and sugarbeet (molasses) at 3.5 ppm. Syngenta has developed and validated analytical methodology for enforcement purposes. This method has been submitted to the Agency and is in PAM Vol. II, Method II. An extensive database of method validation data using this method on various crop commodities is available. Contact: Michael Walsh, (703) 308–2972; *walsh.michael@epa.gov*.

Amended Tolerances

1. *PP 9E7598*. (EPA–HQ–OPP–2009–0812). The Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540, in cooperation with Arysta LifeScience North America LLC., 15401 Weston Parkway, Suite 150, Cary, NC 27513, proposes to amend the tolerances in 40 CFR part 180.599 by revising the tolerance expression to read tolerances are established for the residues of the insecticide acequinocyl, including its metabolites and degradates. Compliance with the tolerance levels specified is to be determined by measuring only the sum of acequinocyl, 2-(acetyloxy)-3-dodecyl-1,4-naphthalenedione, and its metabolite, 2-dodecyl-3-hydroxy-1,4-napthoquinone, calculated as the stoichiometric equivalent of acequinocyl and by establishing a tolerance for the residues of acequinocyl, including its metabolites and degradates in or on vegetables, fruiting, group 8 at 0.7 ppm; okra at 0.7 ppm; bean, edible podded at 0.25 ppm; and hop, dried cones at 3.5 ppm. The analytical method to quantitated residues of acequinocyl and acequinocyl-OH in/on fruit crops utilizes high pressure liquid chromatography-mass spectrometry (HPLC/MS/MS) detection for fruiting vegetables; crop group 8 (tomatoes and peppers) and LC/MS/MS for snap-bean; edible podded; and hop; dried cones. The lowest level for method validation (LLMV) was 0.01 ppm for acequinocyl and 0.025 ppm for acequinocyl-OH. Contact: Sidney Jackson, (703) 305–7610; *jackson.sidney@epa.gov*.

2. *PP 9E7625*. (EPA–HQ–OPP–2009–0843). The Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540, proposes to amend the tolerance in 40 CFR 180.184(c) by deleting the regional tolerance for residues of the herbicide linuron, (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on parsley, leaves at 0.25 ppm. Contact: Laura Nollen, (703) 305–7390; *nollen.laura@epa.gov*.

3. *PP 9F7576*. (EPA–HQ–OPP–2009–0673). BASF Corporation, 26 Davis Dr., Research Triangle Park, NC 27709, proposes to amend by increasing the tolerance in 40 CFR 180.361 for the combined residues of the herbicide pendimethalin, *N*-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its metabolite 4-[(1-ethylpropyl)amino]-2-methyl-3,5-dinitrobenzyl alcohol in or on alfalfa forage to 3.5 ppm. In plants, the method is aqueous organic solvent extraction, column clean-up, and quantitation by gas chromatograph (GC). The method has a LOQ of 0.05 ppm for pendimethalin and the alcohol metabolite. Contact: Philip V. Errico, (703) 305–6663; *errico.philip@epa.gov*.

New Tolerance Exemptions

1. *PP 9E7580*. (EPA–HQ–OPP–2009–0692). Bayer CropScience, 2 T.W., Alexander Dr., P.O. Box 12014, Research Triangle Park, NC 27709, proposes to establish an exemption from the requirement of a tolerance for residues of α-isotridecyl-ω-methoxy-poly(oxy-1,2-ethanediyl) (CAS No. 345642–79–7) when used as a pesticide inert ingredient surfactant in pesticide formulations under 40 CFR 180.920 in or on all raw agricultural commodities. Since the petitioner is requesting a tolerance exemption, an analytical method for residues of the inert in food crops in not required. Contact: Deirdre Sunderland, (703) 603–0851; *sunderland.deirdre@epa.gov*.

2. *PP 9E7634*. (EPA–HQ–OPP–2009–0845). Wacker Chemical Corporation, 3301 Sutton Rd., Adrian, MI 49221–9397, proposes to establish an exemption from the requirement of a tolerance for residues of tetraethoxysilane, polymer with hexamethyldisiloxane with a minimum number average molecule weight (in AMU) of 2,500 (CAS No. 104133–09–7) in or on all raw agricultural commodities when used as a pesticide inert ingredient in pesticide formulations. Since the petitioner is requesting a tolerance exemption, an analytical method for residues of the inert in food crops in not required.

Contact: Deirdre Sunderland, (703) 603–0851; *sunderland.deirdre@epa.gov*.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 16, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. E9–31192 Filed 1–5–10; 8:45 am]

Billing Code 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009-0977; FRL–8806–2]

Maneb; Notice of Receipt of a Request to Voluntarily Cancel Pesticide Registrations of Certain Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant to voluntarily cancel their registrations of certain products containing the pesticide maneb. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws their request within this period. Upon acceptance of this request, any sale, distribution, or use of the products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before February 5, 2010.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2009–0977, by one of the following methods:

• *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2009–0977. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Barbara Briscoe, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8177; fax number: (703) 308–8090, e-mail address: *briscoe.barbara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Requests to Cancel Registrations

This notice announces receipt by EPA of a request from the registrant Drexel Chemical Company to cancel 4 maneb product registrations. In a letter dated November 15, 2009 and an electronic mail message dated December 15, 2009, Drexel Chemical Company requested EPA to cancel the product registrations of the pesticide products identified Table 1.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from a registrant to cancel maneb product registrations. The affected products and the registrant making the request are identified in Tables 1 and 2.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The maneb registrant has requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed request.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued canceling the affected registrations.

TABLE 1. —MANEB PRODUCT REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
019713-00378	Drexel Manzeb 89 W	Maneb
019713-00379	IDA, Inc. Maneb 80W	Maneb
019713-00380	Drexel Manzi Flowable	Maneb
019713-00381	IDA Maneb 4L	Maneb

TABLE 2. —REGISTRANT REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
019713	Drexel Chemical Company, 1700 Channel Avenue, P.O. Box 13327, Memphis, TN 38113

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Voluntary Cancellation Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before February 5, 2010. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. EPA anticipates allowing sale, distribution and use in the cancellation order as described in this Unit below:

1. The registrant may continue to sell or distribute existing stocks of maneb end-use products until such stocks are exhausted.

2. Persons other than the registrant may continue to sell or distribute existing stocks of maneb products identified in Table 1 with previously approved labeling until such stocks are exhausted.

3. Persons other than the registrant may use the maneb end use products identified in Table 1 until exhausted. Any use of existing stocks must be in a manner consistent with the previously approved labeling for that product.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 30, 2009.

Jeffrey S. Billingslea,

Acting Director, Pesticide Re-evaluation Division, Office of Pesticide Programs.

[FR Doc. 2010–31396 Filed 1–5–10; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans. No.	ET req status	Party name
30–NOV–09	20100139	G	German Efromovich.
		G	5K Holdings Limited.
		G	5K Holdings Limited.
	20100140	G	Jose Efromovich.
		G	SK Holdings Limited.
		G	SK Holdings Limited.
	20100156	G	Welsh, Carson, Anderson & Stowe XI, L.P.
		G	Spectrum Holding Company, Inc.
		G	Spectrum Holding Company, Inc.
	20100158	G	Superior Plus Corp.
		G	CH Energy Group, Inc.
		G	Griffith Energy Services, Inc.
	20100168	G	Logitech International S.A.
		G	LifeSize Communications, Inc.
		G	LifeSize Communications, Inc.
	20100174	G	Warburg Pincus Equity Partners, L.P.
		G	InterMune, Inc.
		G	InterMune, Inc.
	20100181	G	Inergy, L.P.
		G	High Sierra Energy, LP.
		G	Monroe Gas Storage Company, LLC.
	20100186	G	Denbury Resources Inc.
		G	Encore Acquisition Company.
		G	Encore Acquisition Company.
01–DEC–09	20090570	G	Watson Pharmaceuticals, Inc.
		G	Quiver Trust.
		G	Robin Hood Holdings Limited.
	20100093	G	Roper Industries, Inc.
		G	Verathon, Inc.
		G	Verathon, Inc.
	20100138	G	Bristol-Myers Squibb Company.
		G	Alder Biopharmaceuticals Inc.
		G	AiderBio Holdings, LLC.
	20100149	G	JLL Partners Fund V, L.P.
		G	KIMC Investments, Inc.
		G	KIMC Investments, Inc.
	20100153	G	Ares Corporation.
		G	Allied Capital Corporation.
		G	Allied Capital Corporation.
	20100173	G	Brian Pratt.
		G	James Construction Group, LLC.
		G	James Construction Group, LLC.
	20100180	G	Mr. Li Tzar Kai, Richard.
		G	AIG Credit Facility Trust.
		G	Pine Bridge Investments Fund Management Ltd.
		G	Pine Bridge Investments Schweiz GmbH.
		G	AIG Investments Japan Co., Ltd.
		G	AIG Japan Capital Investment Co., Ltd.
		G	Pine Bridge Investments Canada Inc.
		G	Pine Bridge Investments Asia Limited.
		G	Pine Bridge Global Investments LLC.
		G	Pine Bridge Capital Partners LLC.
		G	Brazos Capital Management, L.P.
		G	New Brazos GP LLC.
	20100185	G	Telapex, Inc.
		G	Bryan A. Corr, Sr. and Tina N. Corr.
		G	CWC License Holding, Inc.
		G	Corr Wireless Communications, LLC.
	20100194	G	Lightyear Fund II, L.P.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G	ING Groep NV.
		G	PrimeVest Financial Services, Inc.
		G	ING Brokers Network, LLC.
		G	FNI International, Inc.
03–DEC–09	20100178	G	Windstream Corporation.
		G	NuVox, Inc.
		G	NuVox, Inc.
	20100179	G	ALLETE, Inc.
		G	Square Butte Electric Cooperative.
		G	Square Butte Electric Cooperative.
04–DEC–09	20100199	G	Rockwell Collins, Inc.
		G	AR Group, Inc.
		G	AR Group, Inc.
	20100200	G	Berkshire Hathaway Inc.
		G	Burlington Northern Santa Fe Corporation.
		G	Burlington Northern Santa Fe Corporation.
	20100201	G	Clarus Lifesciences I, L.P.
		G	Globus Medical, Inc.
		G	Globus Medical, Inc.
	20100205	G	Vista Equity Partners Fund III, L.P.
		G	Intuit Inc.
		G	Intuit Inc.
	20100211	G	Jacobs Engineering Group Inc.
		G	TYBRIN Corporation.
		G	TYBRIN Corporation.
	20100222	G	SandRidge Energy, Inc.
		G	Forest Oil Corporation.
		G	Forest Oil Permian Corporation.
05–DEC–09	20100191	G	GDF SUEZ.
		G	Astoria Project Partners LLC.
		G	Astoria Project Partners LLC.
09–DEC–09	20100108	G	SPX Corporation.
		G	Connell Limited Partnership.
		G	Yuba Heat Transfer LLC.
	20100113	G	Corinthian Colleges, Inc.
		G	Heald Investment, LLC.
		G	Heald Capital, LLC.
	20100141	G	Sonova Holding AG Alfred E. Mann.
		G	Advanced Bionics Corporation.
		G	Advanced Bionics, LLC.
	20100204	G	Dover Corporation.
		G	Mr. David C. Orlowski.
		G	Isotech of Illinois, Inc.
08–DEC–09	20100142	G	Odyssey Investment Partners Fund IV AIV I, L.P.
		G	ThyssenKrupp AG.
		G	ThyssenKrupp Safway, LLC.
	20100176	G	Healthcare Technology Holdings, Inc.
		G	IMS Health Incorporated.
		G	IMS Health Incorporated.
	20100193	G	Abbott Laboratories.
		G	PanGenetics 110 B.V.
		G	PanGenetics 110 B.V.
10–DEC–09	20100120	G	Qiagen N.V.
		G	SA Biosciences Corporation.
		G	SA Biosciences Corporation.
	20100152	G	Emergency Medical Service Corporation.
		G	Pinnacle Consultants Limited Partnership.
		G	MSO Newco, LLC.
		G	Pinnacle Consultants Mid-Atlantic, L.L.C.
	20100221	G	TransUnion Corporation.
		G	Verl O. Purdy.
		G	MedData Health LLC.
11–DEC–09	20100129	G	Birch Holdco, LP.

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans. No.	ET req status	Party name
		G	Northrop Grumman Corporation.
		G	TASC, Inc.
	20100177	G	The Edward W. Scripps Trust.
		G	TCM Parent, LLC.
		G	TCM Parent, LLC.
	20100210	G	TeleCommunication Systems, Inc.
		G	Networks in Motion, Inc.
		G	Networks in Motion, Inc.
	20100218	G	Odyssey Investment Partners Fund IV, L.P.
		G	TA IX L.P.
		G	One Call Medical, Inc.
	20100219	G	Excellere Capital Fund, L.P.
		G	Med Tech Holdings, Inc.
		G	Med Tech College, L.L.C.
	20100225	G	Mitsui Sumitomo Insurance Group Holdings, Inc.
		G	Aioi Insurance Company, Limited.
		G	Aioi Insurance Company, Limited.
	20100226	G	Odyssey Investment Partners Fund IV, L.P.
		G	New S Corp. I, Inc.
		G	Wencor Holdings LLC.
	20100230	G	JPMorgan Chase & Co.
		G	HTS Stiftung.
		G	Constantia Packaging AG.
	20100232	G	Trow Global Holdings Inc.
		G	Ivan Dvorak.
		G	Teng & Associates, Inc.
	20100233	G	Carl C. Icahn.
		G	Tropicana Entertainment Inc.
		G	Tropicana Entertainment Inc.
	20100235	G	H.I.G Capital Partners IV, LP.
		G	Tennessee Valley Ventures, L.P.
		G	Food Holdings, Inc.
		G	Southern Quality Meats, Inc.
	20100236	G	People's United Financial, Inc.
		G	Financial Federal Corporation.
		G	Financial Federal Corporation.
11–DEC–09	20100238	G	Berkshire Hathaway Inc.
		G	American Electric Power Company, Inc.
		G	AEP Texas Central Company.
		G	AEP Texas North Company.
	20100242	G	The Procter & Gamble Company.
		G	MDVIP, Inc.
		G	MDVIP, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–31207 Filed 1–5–10; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Extramural Support Reimbursement of Travel and Subsistence Expenses Toward Living Organ Donation Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Request for Information.

SUMMARY: Congress has provided specific authority under section 377 of the Public Health Service (PHS) Act, 42 U.S.C. 274f, as amended by Public Law 108–216 for providing reimbursement of travel and subsistence expenses for certain individuals donating their organs. Additionally, Congress authorized the Secretary to provide reimbursement for other incidental non-medical expenses as the Secretary determines by regulation to be appropriate.

Accordingly, under the existing Program launched in October 2007, individuals who meet Program eligibility guidelines may receive reimbursement for qualifying travel and subsistence expenses related to live organ donation. The existing Program

structure is based on Section 377(a)(1) of the PHS Act. This section explicitly allows the Secretary to provide reimbursement of travel and subsistence expenses incurred by living organ donors. HRSA wishes to implement Section 377(a)(2) of the PHS Act which authorizes the Secretary to issue regulations describing other incidental nonmedical expenses appropriate for reimbursement under this Program. The Department is considering initiating rulemaking proposing that reimbursement be extended to additional expenses incurred by living donors as ''incidental nonmedical expenses'' under 42 U.S.C. 274f(a)(2).

Before initiating such rulemaking, HRSA is soliciting input from the community on specific incidental nonmedical expenses to be considered for reimbursement. HRSA is looking for guidance from the community on the mechanism(s) to determine the appropriate reimbursement amount for these additional expenses and to validate that donors incurred or will incur these additional expenses as a result of making living donations of their organs. For example, if the community thinks lost wages and childcare expenses are incidental nonmedical expenses the Program should consider for reimbursement, how much the Program should reimburse donors for these expenses and on what basis should this determination be made?

Individuals can send their comments either by mail, fax, or email to the Division of Transplantation at the address listed below. In addition, the Division plans to sponsor three conference calls to discuss the Program.

DATES: To be considered, written comments must be postmarked no later than March 22, 2010. The conference calls will be held on Tuesday, February 23, 2010 from 10 a.m. to 11:30 a.m.; Wednesday, February 24, 2010 from 2:30 p.m. to 4 p.m.; and Friday, March 5, 2010 from 1 p.m. to 2:30 p.m. All listed times are eastern standard times. Participants must register for the conference calls by contacting Richard Laeng, Public Health Analyst, at (301) 443–5410 or e-mail *rlaeng@hrsa.gov.* The registration deadline is Thursday, February 18, 2010. Because the same information will be discussed on all the calls, it is not necessary to register for multiple calls. Registration is not guaranteed; it is on a first come basis.

ADDRESSES: Please send all written comments to Mesmin Germain, Public Health Analyst, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, Department of Health and Human Services, Room 12C–06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443–0053; fax: (301) 594–6095; e-mail: *mgermain@hrsa.gov.*

FOR FURTHER INFORMATION CONTACT: Mesmin Germain, Public Health Analyst, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, Department of Health and Human Services, Room 12C–06, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857; telephone: (301) 443–0053; fax: (301) 594–6095; e-mail: *mgermain@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On September 14, 2006, HRSA awarded a 4-year cooperative agreement to the Regents of the University of Michigan to establish a national Program to provide reimbursement to living donors for travel and subsistence expenses, as well as additional expenses authorized by any future regulations issued by the Secretary. The Regents of the University of Michigan in partnership with the American Society of Transplant Surgeons (ASTS) established the National Living Donor Assistance Center (NLDAC) to operate this national Program.

On October 17, 2007, The Regents of the University of Michigan and ASTS officially launched NLDAC. NLDAC is located at the ASTS Headquarter in Arlington, Virginia. NLDAC has officially partnered with 299 living transplant programs throughout the United States to submit applications for reimbursement on behalf of their living donors. Applications are filed through the transplant centers and reviewed by a committee at NLDAC. Program eligibility is based on donor and recipient incomes of 300 percent or less of the HHS Poverty Guidelines. Applicants who do not meet eligibility guidelines may request a waiver. All waiver requests are reviewed for approval by HRSA. The Program provides prospective reimbursement to living donors based on the estimated travel expenses related to the donation process. Funds are provided through a controlled value card, giving NLDAC the ability to add and subtract funds as needed. All expenses are monitored in real time by NLDAC to ensure that donors are using funds according to Program guidelines.

HRSA sought input from the public from the conceptual stage of the Program through the determination of the Program's final eligibility criteria to ensure that the Program addresses the needs of the public:

- On October 13, 2005, HRSA published a Request for Public Comments on the proposed Program to provide reimbursement of travel and subsistence expenses in the **Federal Register** (70 FR 59760).
- On April 9, 2007, HRSA published a Request for Public Comments concerning the proposed Program eligibility criteria in the **Federal Register** (72 FR 17564).
- On October 5, 2007, HRSA published a Response to Solicitation of Comments and Final Program Eligibility Guidelines in the **Federal Register** (72 FR 57049).
- On March 5, 2008, HRSA published a Request for Public Comments on proposed changes to the reimbursement of travel and subsistence expenses Program eligibility criteria (concerning additional follow-up visits for donors) in the **Federal Register** (73 FR 11930).
- On June 20, 2008, HRSA published a change to Program eligibility guidelines to provide reimbursement for additional follow-up visits for donors in the **Federal Register** (73 FR 35143).
- On March 4, 2009, HRSA published a Request for Public Comments on a proposed change to the Program eligibility criteria (concerning the follow-up period) in the **Federal Register** (74 FR 9407).
- On June 19, 2009, HRSA published an amendment to Program eligibility guidelines to extend follow-up period that donors may receive reimbursement for qualifying expenses in the **Federal Register** (74 FR 29218).

Through September 30, 2009, the Program has facilitated 370 living organ transplants. Overall, 697 applications have been approved for funding under the established Program eligibility guidelines. The average reimbursement per living donor is approximately $2,600.

HRSA initiated this Program to address the travel and subsistence expenses faced by potential donors, recipients, and family alike. Even with this support, living donors still face other financial barriers related to the donation process.

Reimbursement of other incidental nonmedical expenses being considered would further diminish the financial barriers faced by many donors. Reimbursement for the additional expenses would be provided while maintaining the existing Program guidelines, including capping total reimbursement per donor and companions at $6,000. The expansion will be provided under the Qualified

Expenses Section of the Program Eligibility Guidelines.

Any payment permitted under this authority must not violate section 301 of the National Organ Transplant Act of 1984, which makes it ''unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.'' 42 U.S.C. 274e(a). Certain expenses are excluded from the scope of valuable consideration, including ''expenses of travel, housing, and lost wages incurred by the donor of a human organ in connection with the donation of the organ.'' 42 U.S.C. 274e(c)(2). As the Secretary considers rulemaking, she will consider this criminal prohibition in evaluating which expenses are appropriate for reimbursement under this Program.

HRSA is seeking public comment as to whether the Secretary should initiate rulemaking to allow reimbursement under this Program for specific incidental nonmedical expenses and concerning which incidental nonmedical expenses should be included in such rulemaking.

Dated: December 29, 2009.

Mary K. Wakefield,

Administrator.

[FR Doc. E9–31312 Filed 1–5–10; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0525]

Guidance for Industry on New Contrast Imaging Indication Considerations for Devices and Approved Drug and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''New Contrast Imaging Indication Considerations for Devices and Approved Drug and Biological Products,'' dated December 2009. As part of the Medical Device User Fee Amendments of 2007 (MDUFA) Commitment for the Performance Goals and Procedures commitment letter, FDA agreed to publish guidance for medical imaging devices for use with imaging contrast agents or radiopharmaceuticals. FDA intends this guidance to assist developers of medical imaging devices and imaging drug/biological products that provide image contrast enhancement. The final guidance announced in this document fulfills FDA's commitment to issue guidance called for by the commitment letter. The guidance supercedes the draft guidance of the same title dated September 30, 2008.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Patricia Y. Love, Office of Combination Products (HFG–3), Office of the Commissioner, Food and Drug Administration, 15800 Crabbs Branch Way, Rockville, MD 20855, 301–427–1934.

SUPPLEMENTARY INFORMATION:

I. Background

As part of the Medical Device User Fee Amendments of 2007 (MDUFA) Commitment for the Performance Goals and Procedures, Item I.N of the September 27, 2007, commitment letter, FDA agreed to publish draft guidance by September 30, 2008, for medical imaging devices for use with imaging contrast agents or radiopharmaceuticals. Further, the agreement stated that the ''draft guidance will be published by the end of FY 2008, and will be subject to a 90-day comment period. FDA will issue a final guidance within one year of the close of the public comment period.'' The draft guidance was dated September 30, 2008 (73 FR 58604, October 7, 2008); the comment period closed on January 5, 2009. FDA held meetings with imaging industry stakeholders in July 2008 and August 2009. The final guidance announced in this document fulfills FDA's commitment to issue final guidance called for by the commitment letter. The guidance supercedes the draft guidance of the same title dated September 30, 2008.

FDA is announcing the availability of guidance for industry entitled ''New Contrast Imaging Indication Considerations for Devices and Approved Drug and Biological Products.'' FDA intends this guidance to assist developers of medical imaging devices and imaging drug/biological products that provide image contrast enhancement. Particularly, this guidance focuses on the following topics: (1) When the imaging device developers may add certain new imaging contrast indications to their device for use with already approved imaging drugs without a need for a modification of the drug labeling, (2) when the imaging drug developers may add certain new imaging contrast indications to their drug for use with already approved imaging devices without a need for a modification of the device labeling, and (3) what type of marketing submission(s) imaging drug or imaging device developers should submit to FDA to request approval/clearance to add a new imaging contrast indication. FDA intends for the recommendations in this guidance to promote timely and effective review of, and consistent and appropriate regulation and labeling for imaging drugs and devices.

FDA notes that during the comment period, certain topics identified in the docket were beyond the scope of the guidance document. These comments included requests for guidance on developing specific medical imaging indications (e.g., myocardial perfusion or breast cancer imaging) and offered suggestions for the type of acceptable data. FDA will consider whether separate guidance would be appropriate.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on ''New Contrast Imaging Indication Considerations for Devices and Approved Drug and Biological Products''. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 807 have been approved under

OMB control number 0910–0120. The collections of information in 21 CFR 814 have been approved under OMB control number 0910–0231. The collections of information in 21 CFR 314 have been approved under OMB control number 0910–0001.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Regulatory Information/Guidances/ucm122047.htm* or *http://www.regulations.gov*.

Dated: December 30, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–31307 Filed 1–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Meeting; National Commission on Children and Disasters

AGENCY: Administration for Children and Families, Department of Health and Human Services.

ACTION: Notice of meeting.

DATES: The meeting will be held on Tuesday, February 2, 2010, from 9:30 a.m. to 3:30 p.m.

ADDRESSES: The meeting will be held at the Administration for Children and Families, 901 D Street, SW., Washington, DC 20024. To attend either in person or via teleconference, please register by 5 p.m. Eastern Time, January 28, 2010. To register, please e-mail *jacqueline.haye@acf.hhs.gov* with ''Meeting Registration'' in the subject line, or call (202) 205—9560. Registration must include your name, affiliation, and phone number. If you require a sign language interpreter or other special assistance, please call Jacqueline Haye at (202) 205—9560 or e-mail *jacqueline.haye@acf.hhs.gov* as soon as possible and no later than 5 p.m. Eastern Time, January 19, 2010.

Agenda: The Commission will discuss: (1) Outcomes from the Commission's Long-Term Disaster Recovery Workshop on February 1, 2010; (2) A National resource center on children and disasters; and (3) Plans for future work of the Commission.

Written comments may be submitted electronically to *roberta.lavin@acf.hhs.gov* with ''Public Comment'' in the subject line. The Commission recommends that you include your name, mailing address and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment, and it allows the Commission to contact you if further information on the substance of the comment is needed or if your comment cannot be read due to technical difficulties. The Commission's policy is that the Commission will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment placed in the official record.

The Commission will provide an opportunity for public comments during the public meeting on February 2, 2010. Those wishing to speak will be limited to three minutes each; speakers are encouraged to submit their remarks in writing in advance to ensure their comment is received in case there is inadequate time for all comments to be heard on February 2, 2010.

Additional Information: Contact Roberta Lavin, Office of Human Services Emergency Preparedness and Response, e-mail *roberta.lavin@acf.hhs.gov* or (202) 401—9306.

SUPPLEMENTARY INFORMATION: The National Commission on Children and Disasters is an independent Commission that shall conduct a comprehensive study to examine and assess the needs of children as they relate to preparation for, response to, and recovery from all hazards, building upon the evaluations of other entities and avoiding unnecessary duplication by reviewing the findings, conclusions, and recommendations of these entities. The Commission shall then submit a report to the President and the Congress on the Commission's independent and specific findings, conclusions, and recommendations to address the needs of children as they relate to preparation for, response to, and recovery from all hazards, including major disasters and emergencies.

Dated: December 28, 2009.

David A. Hansell,

Principal Deputy Assistant Secretary for Children and Families.

[FR Doc. E9–31393 Filed 1–5–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Anesthetic and Life Support Drugs Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the Anesthetic and Life Support Drugs Advisory Committee scheduled for January 28, 2010, is cancelled. This meeting was announced in the **Federal Register** of December 8, 2009 (74 FR 64702). This meeting has been cancelled to allow time for the FDA to review new information that is relevant to the benefit risk balance for the proposed new indication. The agency intends to continue evaluating the application and, as needed, will announce future meeting dates in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Kalyani Bhatt, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, email: *Kalyani.Bhatt@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512529. Please call the Information Line for up-to-date information on this meeting.

Dated: December 30, 2009.

David Horowitz,

Assistant Commissioner for Policy.

[FR Doc. E9–31306 Filed 1–5–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: E-Verify Data Collection Survey, New Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: E-Verify Data

Collection Survey, Control No. OMB–55.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 8, 2010.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, Clearance Office, 111 Massachusetts Avenue, NW., Washington, DC 20529–2210. Comments may also be submitted to DHS via facsimile to 202–272–8352, or via e-mail *at rfs.regs@dhs.gov.* When submitting comments by e-mail, please add the Control Number OMB–55 in the subject box.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New information collection.

(2) *Title of the Form/Collection:* E-Verify Data Collection.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No form number. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS will use this collection to evaluate how the E-Verify program is working nationally and among a specific group of employers, to determine whether employers are using the program as intended, and to evaluate positive and negative impacts of the program in a mandatory environment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Web survey 2,400 respondents at 30 minutes (.50) per response. Telephone interviews with Designated Agents 20 respondents x 1 hour per response. Telephone interviews with Designated Agents Users 60 respondents x 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,280 annual burden hours.

If you need a copy of the proposed information collection instrument, or need additional information, please visit: *http://www.regulations.gov/search/index.jsp.*

We may also be contacted at: USCIS, Regulatory Products Division, 111 Massachusetts Avenue, Washington, DC 20529–2210, (202) 272–8377.

Dated: December 31, 2009.

Stephen Tarragon,

Deputy Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E9–31423 Filed 1–5–10; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF INTERIOR

Bureau of Reclamation

Cancellation of the South Valley Facilities Expansion Project—Clark County, NV

AGENCY: Bureau of Reclamation, Interior.

ACTION: Cancellation of Notice of Intent to prepare the Environmental Impact Statement.

SUMMARY: The Bureau of Reclamation, together with the Bureau of Land Management (BLM) and the National Park Service (NPS) as cooperating agencies are cancelling the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for the South Valley Facilities Expansion (SVFE) Project, published in the **Federal Register** on April 18, 2008 (73 FR 21155).

FOR FURTHER INFORMATION CONTACT: Ms. Laureen Perry at 702–293–8392, *lperry@usbr.gov,* fax number 702–293–8418, or at Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470.

SUPPLEMENTARY INFORMATION: The NOI was published in the **Federal Register** on April 18, 2008 by Reclamation, together with the BLM and the NPS as cooperating agencies, for the SVFE Project because the Southern Nevada Water Authority (SNWA) had requested rights-of-way from Reclamation, the BLM, and the NPS—Lake Mead National Recreation Area. The SVFE Project was to be completed in several future phases with an anticipated completion by the year 2027.

In consultation with its member agencies, SNWA continually evaluates infrastructure needs within its service area. At this time, SNWA has determined that service requirements for the southern Las Vegas Valley can continue to be met through existing infrastructure, and the Project is not needed. On September 22, 2009, SNWA provided written notice to Reclamation requesting the withdrawal of the submitted subject right-of-way application. Consequently, the preparation of an EIS to evaluate the proposed SVFE Project is no longer required, thus cancelling the EIS process.

Dated: December 15, 2009.

Lorri Gray-Lee,

Regional Director, Lower Colorado Region.

[FR Doc. E9–31430 Filed 1–5–10; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–474 and 731–TA–1176 (Preliminary)]

Drill Pipe From China

AGENCY: International Trade Commission.

ACTION: Institution of antidumping and countervailing duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigations Nos. 701–TA–474 and 731–TA–1176 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)) (the Act) to determine

whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of drill pipe, provided for in subheadings 7304.22, 7304.23, and 8431.43 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of China. Unless the Department of Commerce extends the time for initiation pursuant to sections 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by February 16, 2010 (as a result of an intervening weekend and Federal holiday). The Commission's views are due at Commerce within five business days thereafter, or by February 23, 2010.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* December 31, 2009.

FOR FURTHER INFORMATION CONTACT: Angela M. W. Newell (202–708–5409), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted in response to a petition filed effective December 31, 2009, by VAM Drilling USA Inc., Houston, TX; Rotary Drilling Tools, Beasley, TX; Texas Steel Conversions, Inc., Houston, TX; TMK IPSCO, Downers Grove, IL; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO–CLC, Pittsburgh, PA.

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Investigations has scheduled a conference in connection with these investigations for 9:30 a.m. on January 21, 2010, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Angela M. W. Newell (202–708–5409) not later than January 15, 2010, to arrange for their appearance. Parties in support of the imposition of antidumping and countervailing duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 26, 2010, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: December 31, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–31412 Filed 1–5–10; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–72,231]

Lonza, Inc. Riverside Plant; Lonza Exclusive Synthesis Section Custom Manufacturing Division Including On-Site Leased Workers of Lab Support, Aerotek, Job Exchange, and Synerfac; Conshohocken, PA; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated December 5, 2009, the United Steel Workers, Local 6816–18, requested administrative reconsideration of the negative determination regarding workers'

eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on November 5, 2009. The Notice of Determination will soon be published in the **Federal Register.**

The initial investigation resulted in a negative determination based on the findings that imports of Trityl Losartan did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information regarding customers of the subject firm.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23rd day of December, 2009.

Del Min Amy Chen,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–31385 Filed 1–5–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–64,897]

Sanford, Including On-Site Leased Workers From Holland Employment and Willstaff, Lewisburg, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on February 3, 2009, applicable to workers of Sanford, including on-site leased workers from Holland Employment, Lewisburg, Tennessee. The notice was published in the **Federal Register** on March 3, 2009 (74 FR 9282).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of dymo labels, pencils, and other writing instruments.

New information shows that the Lewisburg, Tennessee location of the subject firm employs on-site leased workers contracted from Willstaff. The Department has determined that Willstaff workers are sufficiently under the control of the subject firm to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Willstaff working on-site at the Lewisburg, Tennessee location of Sanford.

The amended notice applicable to TA–W–64,897 is hereby issued as follows:

All workers of Sanford, including on-site leased workers from Holland Employment and Willstaff, Lewisburg, Tennessee, who became totally or partially separated from employment on or after January 15, 2008, through February 3, 2011, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of December 2009.

Michael W. Jaffe,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–31389 Filed 1–5–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,282]

National Starch and Chemical Company Specialty Starches Division Including On-Site Leased Workers From Page Employment, Island Falls, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on December 13, 2007, applicable to workers of National Starch and Chemical Company, Specialty Starches Division, Island Falls, Maine. The notice was published in the **Federal Register** on December 31, 2007 (72 FR 74343).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of drum dried and modified food starches.

New information shows that workers leased from Page Employment were employed on-site at the Island Falls, Maine location of National Starch and Chemical Company, Specialty Starches Division. The Department has determined that these workers were sufficiently under the control of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Page Employment working on-site at the Island Falls, Maine location of the subject firm.

The amended notice applicable to TA–W–62,282 is hereby issued as follows:

All workers of National Starch and Chemical Company, Specialty Starches Division, including on-site leased workers from Page Employment, Island Falls, Maine, who became totally or partially separated from employment on or after October 5, 2006, through December 13, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 16th day of December 2009

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–31386 Filed 1–5–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–70,351]

National Semiconductor Corporation Arlington Manufacturing Site Including On-Site Leased Workers From GCA, CMPA (Silverleaf), Custom Foods, Allied Barton Security, ASIL, ASML and Construction Mechanical Systems Arlington, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''),

19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to apply for Worker Adjustment Assistance on September 23, 2009, applicable to workers of National Semiconductor Corporation, Arlington Manufacturing Site, including on-site leased workers from GCA, CMPA, Custom Foods, Allied Barton Security, and ASML, Arlington, Texas. The notice was published in the **Federal Register** November 17, 2009 (74 FR 59253).

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in activities related to the production of integrated circuits.

The company reports that on-site leased workers from ASML and Construction Mechanical Systems were employed on-site at the Arlington, Texas location of National Semiconductor Corporation. The Department has determined that these workers were sufficiently under the control of the subject firm to be considered leased workers. Information also shows that on-site leased workers separated from employment at CMPA had their wages reported under a separated unemployment insurance (UI) tax account for Silverleaf.

Based on these findings, the Department is amending the certification to include workers leased from ASML and Construction Mechanical Systems working on-site at the Arlington, Texas location of National Semiconductor Corporation, Arlington Manufacturing Site and to show that on-site leased workers from CMPS have their (UI) wages reported to Silverleaf.

The amended notice applicable to TA–W–70,351 is hereby issued as follows:

All workers of National Semiconductor Corporation, Arlington Manufacturing Site, including on-site leased workers from GCA, CMPA (Silverleaf), Custom Foods, Allied Barton Security, ASML, and Construction Mechanical Systems, Arlington, Texas, who became totally or partially separated from employment on or after May 18, 2008, through September 23, 2011, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

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

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E9–31390 Filed 1–5–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Notice

Agenda

TIME AND DATE: 9:30 a.m., Thursday, January 21, 2010.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

Matter To Be Considered

8175 *Railroad Accident Report*—Collision of Metrolink Train 111 with Union Pacific Freight Train LOF62–12, Chatsworth, California, September 12, 2008. (DCA–08–MR–009).

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, January 15, 2010.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov*.

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403.

Dated: December 31, 2009.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. E9–31413 Filed 1–4–10; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Notice of Meetings

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Week of January 4, 2010.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of January 4, 2010

Thursday, January 7, 2010

12:15 p.m. Affirmation Session (Public Meeting) (Tentative):

c. *South Carolina Electric and Gas Co. and South Carolina Public Service Authority (also Referred to as Santee Cooper)* (Virgil C. Summer Nuclear Station, Units 2 & 3), LBP–09–2 (Ruling on Standing and Contention Admissibility) (Tentative)

d. *Progress Energy Florida, Inc.* (Combined License Application for Levy County Nuclear Power Plant, Units 1 and 2), LBP–09–10 (Tentative)

e. Detroit Edison Co. (Fermi Power Plant Independent Spent Fuel Storage Installation), LBP–09–20 (Aug. 21, 2009), Docket No. 72–72–EA. (Tentative)

f. *Southern Nuclear Operating Co.* (Early Site Permit for Vogtle ESP Site), Docket No. 52–011–ESP, *Petition for Review of LBP–09–7* (Tentative)

g. *Tennessee Valley Authority* (Bellefonte Nuclear Power Plant Units 1 and 2) (Statutory Authority to Reinstate Construction Permits). (Tentative)

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Angela Bolduc, Chief, Employee/Labor Relations and Work Life Branch, at 301–492–2230, TDD: 301–415–2100, or by e-mail at *angela.bolduc@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: December 31, 2009

Kenneth R. Hart,

Office of the Secretary.

[FR Doc. 2010–8 Filed 1–4–10; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2010–19; Order No. 374]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a Global Direct Contracts 1 agreement to the Competitive Product List. This notice addresses procedural steps associated with this filing.

DATES: Comments are due: January 6, 2010.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Commenters who cannot submit their views electronically should contact the person identified in ''FOR FURTHER INFORMATION CONTACT'' by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Notice of Filing
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I. Background

On December 23, 2009, the Postal Service filed a notice announcing that it has entered into an additional Global Direct Contracts 1 agreement.[1] Global Direct Contracts 1 provide a rate for mail acceptance within the United States and transportation to a receiving country, with the addition by the customer of appropriate foreign indicia, and payment by the Postal Service of the appropriate settlement charges to the receiving country. The Postal Service believes the instant agreement is functionally equivalent to previously submitted Global Direct Contracts 1 agreements, and supported by the Governors' Decision filed in Docket No. MC2008–7.[2] The Postal Service contends that the instant agreement should be included within the Global Direct Contracts 1 product. *Id.* at 2.

The instant contract. The Postal Service filed the instant agreement pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the agreement is in accordance with PRC Order No. 153.[3] *Id.* It submitted the contract and supporting material under seal, and attached the following:

1. Attachment 1—a redacted copy of the contract;
2. Attachment 2—a certified statement required by 39 CFR 3015.5(c)(2);
3. Attachment 3—an application for non-public treatment of materials to maintain the contract and supporting documents under seal; and
4. Attachment 4—a redacted copy of Governors' Decision No. 08–10, which establishes prices and classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts.

The Postal Service will notify the customer of the effective date of the contract, which is the immediate successor of the Global Direct contract at issue in Docket No. CP2009–18, within 30 days after receiving all regulatory approvals.[4] Notice at 2–3. To that end, the Postal Service also explains that a redacted version of the supporting financial documentation is included with this filing as a separate Excel file. *Id.* at 2.

The Notice identifies the instant agreement as fitting within the Mail Classification Schedule language for Global Direct Contracts, and indicates that this agreement is set to replace the one expiring soon.[5] The Notice also provides the Postal Service's rationale for concluding that the instant contract is functionally equivalent to the concurrently proposed new baseline contract filed in Docket Nos. CP2010–17 and CP2010–18. *Id.* The Postal Service submits that the instant contract and the proposed new baseline contract share similar cost and market characteristics with only a minor difference while the ''core terms and conditions remain the same.'' *Id.* Unlike the proposed new baseline contract, the present contract ''allows the customer to tender items that meet the requirements for Canada Post's domestic Ad Mail service, in addition to the types of Canada Post items covered by the contract in Docket Nos. MC2010–17 and CP2010–18.'' *Id.* This kind of distinction, it adds, has not precluded functionally equivalent treatment in the past. *Id.* at 3, n.6, citing PRC Order No. 166. Thus, it concludes that ''this contract should be added to the existing Global Direct Contracts 1 product.'' *Id.* at 4.

II. Notice of Filing

The Commission establishes Docket No. CP2010–19 for consideration of matters related to the agreement identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's agreement is consistent with the policies of 39 U.S.C. 3632, 3633, or 3642. Comments are due no later than January 6, 2010. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Jeremy Simmons to serve as Public Representative in the captioned filing.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2010–19 for consideration of the matters raised in this docket.
2. Pursuant to 39 U.S.C. 505, Jeremy Simmons is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.
3. Comments by interested persons in these proceedings are due no later than January 6, 2010.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2010–31415 Filed 01–05–10; 8:45 am]

BILLING CODE 7710–FW–S

[1] Notice of United States Postal Service Filing of Functionally Equivalent Global Direct Contracts 1 Negotiated Service Agreement, December 23, 2009 (Notice).

[2] Notice at 1–2, citing Attachment 4 reflecting a redacted version of Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Global Direct, Global Bulk Economy, and Global Plus Contracts (Governors' Decision No. 08–10), July 16, 2008. The Postal Service also filed under seal an unredacted version of the Governors' Decision in that docket.

[3] Docket Nos. MC2009–9, CP2009–10 and CP2009–11, Order Concerning Global Direct Contracts Negotiated Service Agreements, December 19, 2008 (Order No. 153).

[4] The contract at issue in Docket No. CP2008–19 was ruled functionally equivalent to other Global Direct Contracts, including the one at issue in Docket No. CP2008–11, which were added to the Competitive Product List. *See* Docket No. CP2009–18, Order Concerning Additional Global Direct Contracts Negotiated Service Agreement, January 9, 2009 (Order No. 166).

[5] *Id.* The Postal Service also states that this agreement is scheduled to remain effective for one year subject to automatic renewal unless terminated by the parties. *Id.* at 3.

DEPARTMENT OF STATE

[Public Notice 6846]

Meeting of Advisory Committee on International Communications and Information Policy

The Department of State's Advisory Committee on International Communications and Information Policy (ACICIP) will hold a public meeting on January 28, 2010 from 9 a.m to 12 p.m. in Room 1107 of the Harry S. Truman Building of the U.S. Department of State. The Truman Building is located at 2201 C Street, NW., Washington, DC 20520.

The committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in

international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country issues.

The meeting will be led by ACICIP Chair Mr. Thomas Wheeler of Core Capital Partners and Ambassador Philip L. Verveer, U.S. Coordinator for International Communications and Information Policy. The meeting's agenda will include discussions pertaining to various upcoming international telecommunications meetings and conferences, as well as bilateral and multilateral meetings that have taken place recently. In addition, the Committee will discuss key issues of importance to U.S. communications policy interests including future generation communications technology issues, international market access, Internet governance, ICT development issues, international spectrum requirements and harmonization, cyber-security, and data protection and privacy. Members of the public may submit suggestions and comments to the ACICIP. Submissions regarding an event, consultation, meeting, etc. listed in the agenda above should be received by the ACICIP Executive Secretary (contact information below) at least ten working days prior to the date of that listed event. All comments must be submitted in written form and should not exceed one page for each country (for comments on consultations) or for each subject area (for other comments). Resource limitations preclude acknowledging or replying to submissions.

While the meeting is open to the public, admittance to the Department of State building is only by means of a pre-clearance. For placement on the pre-clearance list, please submit the following information no later than 5 p.m. on Tuesday, January 26, 2010. (Please note that this information is not retained by the ACICIP Executive Secretary and must therefore be re-submitted for each ACICIP meeting):

I. State That You Are Requesting Pre-Clearance to a Meeting

II. Provide the Following Information

1. Name of meeting and its date and time.
2. Visitor's full name.
3. Date of birth.
4. Citizenship.
5. Acceptable forms of identification for entry into the U.S. Department of State include:
   - U.S. driver's license with photo.
   - Passport.
   - U.S. government agency ID.
8. ID number on the form of ID that the visitor will show upon entry.
9. Whether the visitor has a need for reasonable accommodation. Such requests received after January 21st might not be possible to fulfill.

Send the above information to Joseph Burton by fax (202) 647–7407 or e-mail *BurtonKJ@state.gov.*

Information about members of the public is sought pursuant to 22 U.S.C. 2658; Executive Order 10450; Executive Order 12356: and Section 506(a) of the Federal Records Act of 1950, as amended (44 U.S.C. 3101). The primary purpose for collecting the information is to assure protection of U.S. Department of State facilities and to allow all Department of State (DOS) staff to pre-register single visitors or groups and verify the requester has escort authority. The information furnished is used by the Department of State's Bureau of Diplomatic Security to enhance the Department's security by tracking visitor traffic and to prevent security vulnerability. The information may be shared with Bureau of Diplomatic Security staff as a routine use, and on an as-needed basis with outside law-enforcement organizations as part of the Department's effort to combat terrorism and to cooperate with law enforcement investigations. In addition, the information provided is used to better track, manage, and control access to buildings and restricted areas under the jurisdiction of the Department of State; to determine the status of individuals entering Department of State premises; and to provide data requisite to investigations and security reports. Data may be shared with other Local, State, and Federal law enforcement agencies. Failure to provide the information requested may result in denial of access to U.S. Department of State facilities.

All visitors for this meeting must use the 23rd Street entrance. The valid ID bearing the number provided with your pre-clearance request will be required for admittance. Non-U.S. government attendees must be escorted by Department of State personnel at all times when in the building.

For further information, please contact Joseph Burton, Executive Secretary of the Committee, at (202) 647–5231 or *BurtonKJ@state.gov.* General information about ACICIP and the mission of International Communications and Information Policy is available at: *http://www.state.gov/e/eeb/adcom/c667.htm.*

Dated: December 30, 2009.

Joseph Burton,

ACICIP Executive Secretary, Department of State.

[FR Doc. E9–31377 Filed 1–5–10; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on Information collected to provide services to aircraft inflight and protection of persons/property on the ground.

DATES: Please submit comments by February 5, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Domestic and International Flight Plans.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0026.

Forms(s): 7233–1, 7233–4.

Affected Public: An estimated 300,000 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 1 minute per response.

Estimated Annual Burden Hours: An estimated 287,447 hours annually.

Abstract: Title 49 U.S.C., paragraph 40 103(b) authorizes regulations governing the flight of aircraft. 14 CFR 91 prescribes requirements for filing domestic and international flight plans. Information is collected to provide services to aircraft in flight and protection of persons/property on the ground.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to

the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,*or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: 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; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–31292 Filed 1–5–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 16, 2009, vol. 74, no. 199, pages 53311–53312. The FAA Aviation Research and Development Grants Program establishes uniform policies and procedures for the award and administration of research grants to colleges, universities, not for profit organizations, and profit organizations for security research.

DATES: Please submit comments by February 5, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aviation Research Grants Program.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0559.

Forms(s): SF–3881, 9550–5. SF–269, SF–270, SF–272, SF–424.

Affected Public: An estimated 100 Respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 6.5 hours per response.

Estimated Annual Burden Hours: An estimated 650 hours annually.

Abstract: The FAA Aviation Research and Development Grants Program establishes uniform policies and procedures for the award and administration of research grants to colleges, universities, not for profit organizations, and profit organizations for security research. This program implements OMB Circular A–110, Public Law 101–508, Section 9205 and 9208 and Public Law 101–604, Section 107(d).

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov,* or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: 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; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

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

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–31293 Filed 1–5–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Maricopa County, AZ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Maricopa County, Arizona.

FOR FURTHER INFORMATION CONTACT: Kenneth Davis, Senior Engineering Manager for Operations, Federal Highway Administration, 4000 N. Central Avenue, Suite 1500, Phoenix, Arizona 85012–1906, Telephone (602) 382–8970, Fax: (602) 382–8998, e-mail: *Ken.davis@dot.gov;* or Mary Frye, Environmental Coordinator, Federal Highway Administration, Arizona Division, 4000 N. Central Avenue, Suite 1500, Phoenix, Arizona 85012–1906, Telephone (602) 382–8979, Fax: (602) 382–8998, e-mail: *Mary.frye@dotgov.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arizona Department of Transportation (ADOT), will prepare an Environmental Impact Statement (EIS) on proposed operational improvements to the Interstate 17 (I–17) corridor in Maricopa County, Arizona. The proposed improvements for I–17 would occur along a 21-mile stretch of highway through metropolitan Phoenix from the I–17 merge with Interstate 10 near Sky Harbor Airport and extend north to the I–17 interchange with State Route 101L. The proposed project evaluation will include, but will not be limited to, potential impacts to residential and commercial development, cultural resources, threatened and endangered species, jurisdictional waters of the U.S., air and noise quality, hazardous materials, and secondary and cumulative impacts.

Improvements to the corridor are considered necessary to address current traffic volumes that exceed the existing roadway capacity resulting in heavy congestion and to accommodate the projected traffic demand associated with regional growth. The proposed I–17

improvements, which would increase capacity and improve operational efficiency, were identified as important elements of the Maricopa Association of Government's Regional Transportation Plan Freeway Program. A full range of reasonable alternatives will be considered including: (1) Taking no action; (2) using alternate travel modes; (3) making transportation system management improvements; and (4) widening the existing freeway to provide additional general travel and High Occupancy Vehicle (HOV) lanes.

The EIS will conform to the environmental review process established in Section 6002 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: a Legacy for Users (SAFETEA–LU). The Section 6002 environmental review process requires the following activities: the identification and invitation of cooperating and participating agencies; the establishment of a coordination plan; and opportunities for additional agency and public comment on the project's purpose and need, alternatives and methodologies for determining impacts. Additionally, a public hearing following the release of the draft ElS will also be provided. Public notice advertisements and direct mailings will notify interested parties of the time and place of public meetings and the public hearing.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, including the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Arizona Game and Fish Department, Federal Aviation Administration, City of Phoenix, Maricopa County, and Maricopa Association of Governments. Letters will also be sent to interested parties including the Central City Village Planning Committee, Estrella Village Planning Committee, Encanto Village Planning Committee, Maryvale Village Planning Committee, Alhambra Village Planning Committee, North Mountain Village Planning Committee, Deer Valley Village Planning Committee, and appropriate Phoenix neighborhood associations.

To insure that the full range of issues related to this proposed action is addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the ElS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program No. 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: December 28, 2009.

Kenneth H. Davis,

Senior Engineering Manager for Operations, Federal Highway Administration, Arizona Division Office, Phoenix, Arizona.

[FR Doc. E9–31291 Filed 1–5–10; 8:45 am]

BILLING CODE 4910–22–M

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