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Presidential Documents

Title 3—

The President

Notice of May 12, 2010

Continuation of the National Emergency With Respect to the Stabilization of Iraq

On May 22, 2003, by Executive Order 13303, the President declared a national emergency protecting the Development Fund for Iraq and certain other property in which Iraq has an interest, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706). The President took this action to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq.

In Executive Order 13315 of August 28, 2003, Executive Order 13350 of July 29, 2004, Executive Order 13364 of November 29, 2004, and Executive Order 13438 of July 17, 2007, the President modified the scope of the national emergency declared in Executive Order 13303 and took additional steps in response to this national emergency.

Because the obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared in Executive Order 13303, as modified in scope and relied upon for additional steps taken in Executive Orders 13315, 13350, 13364, and 13438, must continue in effect beyond May 22, 2010. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the stabilization of Iraq.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

The White House,
May 12, 2010.

[FR Doc. 2010–11884
Filed 5–14–10; 8:45 am]
Billing code 3195–W0–P

Rules and Regulations

Federal Register
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Monday, May 17, 2010

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.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2009–0538]

RIN 3150–AI75

List of Approved Spent Fuel Storage Casks: NUHOMS® HD System Revision 1; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on May 6, 2010 (75 FR 24786), that amends the regulations that govern storage of spent nuclear fuel. Specifically, this action amends the list of approved spent fuel storage casks to add revision 1 to the NUHOMS HD spent fuel storage cask system. This action is necessary to correctly specify the effective date of the rule if no adverse comments are received, because the notice of direct final rulemaking and the companion notice of proposed rulemaking (75 FR 25120; May 7, 2010) were published in the **Federal Register** on different dates instead of being published concurrently on the same date, as erroneously stated in the notices.

DATES: Effective July 21, 2010.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 24786, in the first column, the **DATES** section is corrected to indicate that the final rule is effective on July 21, 2010. On page 24787, column one, the fourth sentence in the Procedural Background section is corrected to read: The amendment to the rule will become effective on July 21, 2010. Also, on page 24787, in the first column, the fifth sentence in the Procedural Background is corrected to read: However, if the NRC receives significant adverse comments on the direct final rule by June 7, 2010, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Rules and Regulations section of the **Federal Register** on May 7, 2010 (75 FR 25120).

Dated at Rockville, Maryland, this 10th day of May 2010.

For the Nuclear Regulatory Commission.

Helen Chang,

Acting Chief, Rules, Announcements and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 2010–11561 Filed 5–14–10; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0685; Directorate Identifier 2009–NM–113–AD; Amendment 39–16299; AD 2010–10–20]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Model DC–9–30, DC–9–40, and DC–9–50 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model DC–9–30, DC–9–40, and DC–9–50 series airplanes. This AD requires inspecting to determine the part numbers of the forward and aft auxiliary tank fuel boost and transfer pump conduit/conduit assembly and conduit assembly electrical connector, as applicable, and corrective actions if necessary. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to detect and correct the potential for an arc/spark condition to occur within the fuel boost or transfer pump conduit assembly connectors and propagate into the forward and aft auxiliary fuel tanks, which could result in a fire or explosion.

DATES: This AD is effective June 21, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of June 21, 2010.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model DC–9–30, DC–9–40, and DC–9–50 series airplanes. That NPRM was published in the **Federal Register** on August 12, 2009 (74 FR 40525). That NPRM proposed to require inspecting to determine the part numbers of the forward and aft auxiliary tank fuel boost and transfer pump conduit/conduit

assembly and conduit assembly electrical connector, as applicable, and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received from the commenter. Northwest Airlines (NWA) concurs with the intent of the NPRM.

Request To Delay Issuance of the Final Rule Until the Revised Service Bulletin Is Issued, Reviewed, and Commented On by Operators

NWA states that operators should have the opportunity to review and comment on the revised service bulletin prior to any final rule decision. NWA explains that there are omissions regarding airplane effectivity and part number discrepancies in Boeing Service Bulletin DC9–28–227, dated April 23, 2009. NWA notes that Boeing was notified of these issues, and that Boeing concurs with the effectivity problems and noted the differences in the associated wiring diagrams and drawings that affect the part numbers. NWA asserts that Boeing has acknowledged that Boeing Service Bulletin DC9–28–227, dated April 23, 2009, needs to be revised.

NWA believes that certain airplanes were delivered with a 780 gallon forward fuselage supplemental tank but without a 780 gallon aft fuselage supplemental tank, and that these airplanes may not be addressed as a group in Boeing Service Bulletin DC9–28–227, dated April 23, 2009.

NWA also believes that certain airplanes identified as Group 1 in Boeing Service Bulletin DC9–28–227, dated April 23, 2009, have the same conduit assembly part number as other airplanes. NWA believes that these airplanes cannot use the same conduit assembly because conduit assemblies have specified wire numbers as per certain drawings.

From these statements, we infer that NWA requests that we delay issuing the AD until Boeing Service Bulletin DC9–28–227, dated April 23, 2009, is revised and released. We do not agree to delay issuing the final rule until a revised service bulletin is reviewed and commented on by operators. The airplanes that NWA believes were delivered with a 780 gallon forward fuselage supplemental tank but without a 780 gallon aft supplemental fuselage tank, and that may not be addressed as a group in Boeing Service Bulletin DC9–28–227, dated April 23, 2009, are not included in the effectivity of that service bulletin because they already had the acceptable conduit assembly installed prior to the time of delivery. Also, Boeing Service Bulletin DC9–28–227, dated April 23, 2009, reflects the correct conduit part numbers installed prior to the time of airplane delivery; therefore, the content in Boeing Service Bulletin DC9–28–227, dated April 23, 2009, is correct. We have confirmed with Boeing that Boeing Service Bulletin DC9–28–227, dated April 23, 2009, does not need to be revised regarding these issues. We have not changed the AD in this regard.

If a new revision to the service information is published, under the provisions of paragraph (h) of the final rule, we will consider requests for alternative methods of compliance (AMOCs) if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed the AD in this regard.

Request for a Clarification Statement Acknowledging Post-Production Removal of Auxiliary Fuel Tank(s)

NWA states that the final rule should include a clarification statement for paragraph (g) of the NPRM that acknowledges post-production removal of an auxiliary fuel tank, which releases the operator from those requirements of Boeing Service Bulletin DC9–28–227, dated April 23, 2009, that are no longer applicable. NWA explains that Boeing Service Bulletin DC9–28–227, dated April 23, 2009, does not address the issue of a removed auxiliary fuel tank and that the equipment effectivity list quantifies airplane groups at the time of production and does not address post-production modifications to the airplane. NWA acknowledges that an auxiliary fuel tank, which was installed at the time of production, may have been removed by operators for a variety of reasons. NWA asserts that the removal of the auxiliary fuel tank and thereby the fuel boost or transfer pump conduit assembly connectors removes the unsafe condition specified in paragraph (e) of the NPRM, although the language specified in paragraph (g) of the NPRM will still require operators to request an AMOC for removed auxiliary fuel tanks.

We agree. If the auxiliary fuel tank(s) has been removed, thereby removing the fuel boost or transfer fuel pump conduit assembly connectors, the unsafe condition is removed as well. We have revised paragraph (g) of the final rule to account for auxiliary fuel tank(s) that have been removed.

Explanation of Change Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

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

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD affects 137 airplanes of U.S. registry. We also estimate that it takes up to 8 work-hours per product to comply with this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $93,160, or $680 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a

substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

(1) Is not a "significant regulatory action" under Executive Order 12866,

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–10–20 McDonnell Douglas Corporation: Amendment 39–16299. Docket No. FAA–2009–0685; Directorate Identifier 2009–NM–113–AD.

Effective Date

(a) This airworthiness directive (AD) is effective June 21, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to McDonnell Douglas Corporation Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B), DC–9–41, and DC–9–51 airplanes, certificated in any category; as identified in Boeing Service Bulletin DC9–28–227, dated April 23, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to detect and correct the potential for an arc/spark condition to occur within the fuel boost or transfer pump conduit assembly connectors and propagate into the forward and aft auxiliary fuel tanks, which could result in a fire or explosion.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Inspection

(g) Within 60 months after the effective date of this AD, inspect to determine the part numbers of the forward and aft auxiliary fuel tank boost and transfer pumps conduit assembly and conduit assembly electrical connector, as applicable, and do applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC9–28–227, dated April 23, 2009. Do the applicable corrective actions before further flight. If the auxiliary fuel tank(s) has been removed, thereby removing the fuel boost or transfer fuel pump conduit assembly connectors, the corrective action specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–28–227, dated April 23, 2009, is not required. If the removed auxiliary fuel tank(s) are re-installed, the requirements of paragraph (g) of this AD must be done before further flight.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: William Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5253; fax (562) 627–5210.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Material Incorporated by Reference

(i) You must use Boeing Service Bulletin DC9–28–227, dated April 23, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; e-mail *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

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

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

Issued in Renton, Washington, on May 3, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11185 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0714; Directorate Identifier 2009–NM–041–AD; Amendment 39–16290; AD 2010–10–11]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP Airplanes

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

ACTION: Final rule.

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

It was reported that after commanding the landing gear lever to down the three green landing gear positioning indication was displayed followed by the LG/LEVER DISAGREE EICAS [engine indicating and crew alerting system] message. The crew decided to continue the approach and landing procedure. As soon as the crew identified that the landing gear was not extended properly, a go-around procedure was successfully performed. During maneuver, the airplane settled momentarily onto the flaps and belly.

* * * * *

The unsafe condition is the landing gear remaining in the up and locked position during approach and landing. This condition could be accompanied by an invalid EICAS landing gear position indication, which could result in landing with gear in the up position and eliminate controllability of the airplane on the ground. This may consequently result in structural damage to the airplane. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective June 21, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 21, 2010.

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on February 23, 2010 (75 FR 7998). That supplemental NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> It was reported that after commanding the landing gear lever to down the three green landing gear positioning indication was displayed followed by the LG/LEVER DISAGREE EICAS [engine indicating and crew alerting system] message. The crew decided to continue the approach and landing procedure. As soon as the crew identified that the landing gear was not extended properly, a go-around procedure was successfully performed. During maneuver, the airplane settled momentarily onto the flaps and belly.
>
> * * * * *

The unsafe condition is the landing gear remaining in the up and locked position during approach and landing. This condition could be accompanied by an invalid EICAS landing gear position indication, which could result in landing with gear in the up position and eliminate controllability of the airplane on ground. This may consequently result in structural damage to the airplane. Required actions include replacing the landing gear electronic unit with a new one having a new part number. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Clarification of Credit Paragraph

We have revised paragraph (g)(5) of this AD to clarify that doing replacements in accordance with one of the service bulletins identified in Table 1 of this AD, if done before the effective date of this AD, is acceptable for compliance with the corresponding replacement required by paragraph (g)(1) or (g)(3) of this AD.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 711 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $0 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $120,870, or $170 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone

(800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–10–11 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–16290. Docket No. FAA–2009–0714; Directorate Identifier 2009–NM–041–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 21, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135BJ, –135ER, –135KE, –135KL, –135LR, –145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; certificated in any category; equipped with landing gear electronic unit (LGEU) having part number (P/N) 355–022–002.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing gear.

Reason

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

It was reported that after commanding the landing gear lever to down the three green landing gear positioning indication was displayed followed by the LG/LEVER DISAGREE EICAS [engine indicating and crew alerting system] message. The crew decided to continue the approach and landing procedure. As soon as the crew identified that the landing gear was not extended properly, a go-around procedure was successfully performed. During maneuver, the airplane settled momentarily onto the flaps and belly.

* * * * *

The unsafe condition is the landing gear remaining in the up and locked position during approach and landing. This condition could be accompanied by an invalid EICAS landing gear position indication, which could result in landing with gear in the up position and eliminate controllability of the airplane on the ground. This may consequently result in structural damage to the airplane. Required actions include replacing the LGEU with a new one having a new part number.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

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

(1) Within 12 months after the effective date of this AD, replace any LGEU having P/N 355–022–002 having a serial number (S/N) 1000 through 1999 inclusive with a new LGEU having P/N 355–022–003, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–32–0120, Revision 02, dated February 17, 2009; or 145LEG–32–0032, Revision 02, dated February 17, 2009; as applicable.

(2) As of 12 months after the effective date of this AD, no person may install on any airplane an LGEU having a P/N 355–022–002 having a S/N 1000 through 1999 inclusive.

(3) Within 30 months after the effective date of this AD, replace any LGEU having P/N 355–022–002 having a serial number not identified in paragraph (g)(1) of this AD, with a new LGEU having P/N 355–022–003, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–32–0120, Revision 02, dated February 17, 2009; or 145LEG–32–0032, Revision 02, dated February 17, 2009; as applicable.

(4) As of 30 months after the effective date of this AD, no person may install on any airplane an LGEU having a P/N 355–022–002 and a serial number not identified in paragraph (g)(1) of this AD.

(5) Replacing the LGEU is also acceptable for compliance with the corresponding requirement of paragraph (g)(1) or (g)(3) of this AD if done before the effective date of this AD in accordance with one of the service bulletins identified in Table 1 of this AD.

TABLE 1—CREDIT SERVICE BULLETINS

EMBRAER Service Bulletin—	Revision—	Dated—
145LEG–32–0032	Original	October 8, 2008.
145LEG–32–0032	01	November 4, 2008.
145–32–0120	Original	September 15, 2008.
145–32–0120	01	November 4, 2008.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows:

Although EMBRAER Service Bulletins 145LEG–32–0032, Revision 02, dated February 17, 2009; and 145–32–0120, Revision 02, dated February 17, 2009; specify that no person may install on any airplane an LGEU having P/N 355–022–002 as of 30 months after the effective date of this AD, we have determined that no LGEU having P/N 355–022–002 with a S/N 1000 through 1999 inclusive may be installed as of 12 months after the effective date of this AD. Allowing installation of those serial numbers beyond 12 months would not address the identified unsafe condition and ensure an adequate level of safety. This difference has been coordinated with the Agência Nacional de Aviação Civil (ANAC).

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(i) Refer to MCAI Brazilian Airworthiness Directive 2009–01–01, effective January 8, 2009, as corrected by Brazilian Airworthiness Directive Errata, effective January 20, 2009; EMBRAER Service Bulletin 145–32–0120, Revision 02, dated February 17, 2009; and EMBRAER Service Bulletin 145LEG–32–0032, Revision 02, dated February 17, 2009; for related information.

Material Incorporated by Reference

(j) You must use EMBRAER Service Bulletin 145–32–0120, Revision 02, dated February 17, 2009; and EMBRAER Service Bulletin 145LEG–32–0032, Revision 02, dated February 17, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: *distrib@embraer.com.br;* Internet: *http://www.flyembraer.com.*

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

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

Issued in Renton, Washington on April 29, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–10872 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0475; Directorate Identifier 2010–NM–083–AD; Amendment 39–16297; AD 2010–10–18]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model BD–100–1A10 (Challenger 300) Airplanes

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

ACTION: Final rule; request for comments.

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

Investigation of a recent high altitude loss of cabin pressurization on a BD–100–1A10 aircraft determined that it was caused by a partial blockage of a safety valve cabin pressure-sensing port, in conjunction with a dormant failure/leakage of the safety valve manometric capsule. The blockage, caused by accumulation of lint/dust on the grid of the port plug, did not allow sufficient airflow through the cabin pressure-sensing port to compensate for the rate of leakage from the manometric capsule, resulting in the opening of the safety valve. It was also determined that failure of the manometric capsule alone would not result in the opening of the safety valve.

* * * * *

The unsafe condition is possible loss of cabin pressure caused by the opening of the safety valve. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective June 1, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 1, 2010.

We must receive comments on this AD by July 1, 2010.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation, which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–06, dated February 24, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Investigation of a recent high altitude loss of cabin pressurization on a BD–100–1A10 aircraft determined that it was caused by a partial blockage of a safety valve cabin pressure-sensing port, in conjunction with a dormant failure/leakage of the safety valve manometric capsule. The blockage, caused by accumulation of lint/dust on the grid of the port plug, did not allow sufficient airflow through the cabin pressure-sensing port to compensate for the rate of leakage from the manometric capsule, resulting in the opening of the safety valve. It was also determined that failure of the manometric capsule alone would not result in the opening of the safety valve.

This directive mandates a revision of the maintenance schedule, the [repetitive] cleaning of the safety valves, the removal of material from the area surrounding the safety valves and the modification of the safety valves with a gridless cabin pressure-sensing port plug.

The unsafe condition is possible loss of cabin pressure caused by the opening of the safety valve. The required actions also include a detailed visual inspection

of the safety valves and surrounding areas for discrepant material (*e.g.,* foreign material surrounding the safety valves, room temperature vulcanizing (RTV) sealant on safety valves, RTV excess on the bulkhead, tape near the safety valve opening, and, on certain airplanes, insulation near the safety valve opening, and foam in the area surrounding the safety valves), and for contamination found in the safety valve pressure ports. If contamination is found on the safety valve pressure ports, a detailed visual inspection for the presence of RTV on the outside and inside diameter of the pressure sensing port conduit is required. If discrepant materials are found, removing discrepant material, cleaning the surfaces of the valves, and securing insulation are required, as applicable. If the presence of RTV is detected, cleaning the surfaces of the valves and installing a new safety valve are required, as applicable. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletin A100–21–08, dated June 18, 2009; Service Bulletin 100–25–14, dated June 30, 2008; Service Bulletin 100–25–21, dated June 30, 2008; and Temporary Revision 5–2–53, dated October 1, 2009, to Section 5–10–40, "Certification Maintenance Requirements," in Part 2 of Chapter 5 of Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

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

Differences Between the AD and the MCAI or Service Information

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

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

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because if the safety valve cabin pressure-sensing ports are partially blocked in conjunction with a dormant failure or leakage of the safety valve manometric capsule could result in a loss of cabin pressurization. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0475; Directorate Identifier 2010–NM–083–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–10–18 Bombardier, Inc.: Amendment 39–16297. Docket No. FAA–2010–0475; Directorate Identifier 2010–NM–083–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 1, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model BD–100–1A10 (Challenger 300) airplanes, having serial numbers (S/Ns) 20001 through 20274 inclusive, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (l) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 21 and 25: Air conditioning and Equipment/Furnishings, respectively.

Reason

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

Investigation of a recent high altitude loss of cabin pressurization on a BD–100–1A10 aircraft determined that it was caused by a partial blockage of a safety valve cabin pressure-sensing port, in conjunction with a dormant failure/leakage of the safety valve manometric capsule. The blockage, caused by accumulation of lint/dust on the grid of the port plug, did not allow sufficient airflow through the cabin pressure-sensing port to compensate for the rate of leakage from the manometric capsule, resulting in the opening of the safety valve. It was also determined that failure of the manometric capsule alone would not result in the opening of the safety valve.

This directive mandates a revision of the maintenance schedule, the [repetitive] cleaning of the safety valves, the removal of material from the area surrounding the safety valves and the modification of the safety valves with a gridless cabin pressure-sensing port plug.

The unsafe condition is possible loss of cabin pressure caused by the opening of the safety valve. The required actions also include a detailed visual inspection of the safety valves and surrounding areas for discrepant material (*e.g.,* foreign material surrounding the safety valves, room temperature vulcanizing (RTV) sealant on safety valves, RTV excess on the bulkhead, tape near the safety valve opening, and, on certain airplanes, insulation near the safety valve opening, and foam in the area surrounding the safety valves), and for contamination found in the safety valve pressure ports. If contamination is found on the safety valve pressure ports, a detailed visual inspection for the presence of RTV on the outside and inside diameter of the pressure sensing port conduit is required. If discrepant materials are found, removing discrepant material, cleaning the surfaces of the valves, and securing insulation are required, as applicable. If the presence of RTV is detected, cleaning the surfaces of the valves and installing a new safety valve are required, as applicable.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) *For all airplanes:* Within 30 days after the effective date of this AD, revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating Tasks 21–31–09–101 and 21–31–09–102 in the Bombardier Temporary Revision (TR) 5–2–53, dated October 1, 2009, to Section 5–10–40, "Certification Maintenance Requirements," in Part 2 of Chapter 5 of Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks.

(1) *For the new tasks identified in Bombardier TR 5–2–53, dated October 1, 2009:* For airplanes identified in the "Phase-in" section of Bombardier TR 5–2–53, dated October 1, 2009, the initial compliance with the new tasks must be carried out in accordance with the phase-in schedule detailed in Bombardier TR 5–2–53, dated October 1, 2009, except where that TR specifies a compliance time from the date of the TR, this AD requires compliance within the specified time after the effective date of this AD. Thereafter, except as provided by paragraph (l)(1) of this AD, no alternative to the task intervals may be used.

(2) When information in Bombardier TR 5–2–53, dated October 1, 2009, has been included in the general revisions of the applicable Airworthiness Limitations section, that TR may be removed from that Airworthiness Limitations section of the Instructions for Continued Airworthiness.

(h) For airplanes having S/Ns 20003 through 20173 inclusive, 20176, and 20177: Within 50 flight hours after the effective date of this AD, do a detailed visual inspection of the safety valves and surrounding areas for discrepant material (e.g., foreign material surrounding the safety valves, room temperature vulcanizing (RTV) sealant on safety valves, RTV excess on the bulkhead, tape near the safety valve opening, and, on certain airplanes, insulation near the safety valve opening, and foam in the area surrounding the safety valves) and a detailed visual inspection for contamination (*e.g.,* RTV, dust, or lint) in the safety valve pressure ports, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–25–14, dated June 30, 2008 (for airplanes having S/Ns 20124, 20125, 20128, 20134, 20139, 20143, 20146, 20148 to 20173 inclusive, 20176, and 20177); or Bombardier Service Bulletin 100–25–21, dated June 30, 2008 (for airplanes having S/Ns 20003 through 20123 inclusive, 20126, 20127, 20129 to 20133 inclusive, 20135 to 20138 inclusive, 20140 to 20142 inclusive, 20144, 20145, and 20147).

(1) If any discrepant material is found during the detailed visual inspection, before further flight, remove the discrepant material, clean the surfaces of the valves, and secure the insulation, as applicable, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–25–14, dated June 30, 2008 (for airplanes having S/Ns 20124, 20125, 20128, 20134, 20139, 20143, 20146, 20148 to 20173 inclusive, 20176, and 20177); or Bombardier Service Bulletin 100–25–21, dated June 30, 2008 (for airplanes having S/Ns 20003 through 20123 inclusive, 20126, 20127, 20129 to 20133 inclusive, 20135 to 20138 inclusive, 20140 to 20142 inclusive, 20144, 20145, and 20147).

(2) If contamination (*e.g.,* RTV, dust, or lint) is found on the safety valve pressure sensing ports, before further flight, do a detailed visual inspection of the outside and inside diameters of the pressure sensing port conduit for the presence of RTV; and do the actions specified in paragraph (h)(2)(i) and (h)(2)(ii) of this AD, as applicable; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 100–25–14, dated June 30, 2008 (for airplanes having S/Ns 20124, 20125, 20128, 20134, 20139, 20143, 20146, 20148 to 20173 inclusive, 20176, and 20177); or Bombardier Service Bulletin 100–25–21, dated June 30, 2008 (for airplanes having S/Ns 20003 through 20123 inclusive, 20126, 20127, 20129 to 20133 inclusive, 20135 to 20138 inclusive, 20140 to 20142 inclusive, 20144, 20145, and 20147).

(i) If no RTV is found, clean the plug of the sensing port.

(ii) If any RTV is found, install a new safety valve.

(i) For airplanes having S/Ns 20174, 20175, 20178 through 20189 inclusive, 20191 through 20228 inclusive, 20230 through 20232 inclusive, 20235, 20237, 20238, 20241, 20244, 20247, 20249 through 20251 inclusive, 20254, 20256 and 20259: Within 50 flight hours after the effective date of this AD, clean the cabin pressure-sensing port plug in both safety valves, in accordance with Paragraph 2.B., "Part A—Modification—Cleaning," of the Accomplishment Instructions of Bombardier Service Bulletin A100–21–08, dated June 18, 2009.

(j) For airplanes having S/Ns 20003 through 20189 inclusive, 20191 through 20228 inclusive, 20230 through 20232 inclusive, 20235, 20237, 20238, 20241, 20244, 20247, 20249 through 20251 inclusive, 20254, 20256, and 20259: Within 50 flight hours after the effective date of this AD, clean the cabin pressure-sensing port plug in both safety valves, in accordance with Paragraph 2.B., "Part A—Modification—Cleaning," of the Accomplishment Instructions of Bombardier Service Bulletin A100–21–08, dated June 18, 2009. Repeat the cleaning thereafter at intervals not to exceed 50 flight hours until the actions specified by paragraph (k) of this AD are completed.

(k) For airplanes, having S/Ns 20003 through 20189 inclusive, 20191 through 20228 inclusive, 20230 through 20232 inclusive, 20235, 20237, 20238, 20241, 20244, 20247, 20249 through 20251 inclusive, 20254, 20256, and 20259: Replacing the cabin pressure-sensing port plug having part number (P/N) 2844–060 in both safety valves with a new gridless plug

having P/N 2844–19 and re-identifying the safety valves, in accordance with Paragraph 2.C., "Part B—Modification—Replacement," of the Accomplishment Instructions of Bombardier Service Bulletin A100–21–08, dated June 18, 2009, terminates the repetitive cleanings required by paragraph (j) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: This AD does not require the replacement of the safety valve cabin pressure-sensing port plugs and the re-identification of the safety valves required in Part V of MCAI Canadian Airworthiness Directive CF–2010–06, dated February 24, 2010. The planned compliance times for these actions would not allow enough time to provide notice and opportunity for prior public comment on the merits of those actions. Therefore, we are considering further rulemaking to address these issues.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office, ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(m) Refer to MCAI Canadian Airworthiness Directive CF–2010–06, dated February 24, 2010; and the service information specified in Table 1 of this AD; as applicable; for related information.

TABLE 1—SERVICE INFORMATION

Document	Date
Bombardier Service Bulletin A100–21–08	June 18, 2009.
Bombardier Service Bulletin 100–25–14	June 30, 2008.
Bombardier Service Bulletin 100–25–21	June 30, 2008.
Bombardier Temporary Revision 5–2–53, dated October 1, 2009, to Section 5–10–40, "Certification Maintenance Requirements," in Part 2 of Chapter 5 of Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks.	October 1, 2009.

Material Incorporated by Reference

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

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document	Date
Bombardier Service Bulletin A100–21–08	June 18, 2009.
Bombardier Service Bulletin 100–25–14	June 30, 2008.
Bombardier Service Bulletin 100–25–21	June 30, 2008.
Bombardier Temporary Revision 5–2–53, dated October 1, 2009, to Section 5–10–40, "Certification Maintenance Requirements," in Part 2 of Chapter 5 of Bombardier Challenger 300 BD–100 Time Limits/Maintenance Checks.	October 1, 2009.

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

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

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

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

Issued in Renton, Washington, on May 3, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11074 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0060; Directorate Identifier 2010–SW–06–AD; Amendment 39–16282; AD 2010–10–03]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S–92A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the Sikorsky Model S–92A helicopters. The

AD requires replacing the main gearbox (MGB) filter bowl assembly with a two-piece MGB filter bowl assembly and replacing the existing mounting studs. The AD also requires inspecting the MGB lube system filters, the housing, the housing threads, and the lockring counterbore and repairing or replacing them as necessary. This amendment is prompted by tests indicating that an existing MGB filter bowl assembly can fail under certain loading conditions including those associated with a damaged MGB filter or mounting stud resulting from high frequency maintenance tasks. Testing of the improved MGB filter bowl assembly demonstrates a significant increase in strength and durability over the existing filter bowl. The actions specified by this AD are intended to prevent failure of the MGB filter bowl assembly due to failure of the mounting studs or the filter bowl, loss of oil from the MGB, failure of the MGB, and subsequent loss of control of the helicopter.

DATES: Effective June 21, 2010.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 2010.

ADDRESSES: You may get the service information identified in this AD from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com,* or at *http://www.sikorsky.com.*

Examining the Docket: You may examine the docket that contains this AD, any comments, and other information on the Internet at *http://www.regulations.gov* or at the Docket Operations office, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on January 27, 2010 (75 FR 4308). That action proposed to require replacing the MGB filter bowl assembly with a two-piece MGB filter bowl assembly and replacing the existing mounting studs. That action also proposed inspecting the MGB lube system filters, the housing, the housing threads, and the lockring counterbore and repairing and replacing them as necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that this AD will affect 22 helicopters of U.S. registry. The required actions will take about 6 hours to inspect the existing filter bowl assembly and replace the MGB lube system filters, the mounting studs, and to install an improved filter bowl assembly at an average labor rate of $85 per work hour. Required parts will cost about $3,257 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is $82,214.

Regulatory Findings

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

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

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

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

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

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

Authority for This Rulemaking

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–10–03 Sikorsky Aircraft Corporation: Amendment 39–16282. Docket No. FAA–2010–0060; Directorate Identifier 2010–SW–06–AD.

Applicability: Model S–92A helicopters, with main gearbox (MGB) filter bowl assembly, part number (P/N) 92351–15802–101, installed, certificated in any category.

Compliance: Required as indicated, unless done previously.

To prevent failure of the MGB filter bowl assembly due to failure of the mounting studs or the filter bowl, loss of oil from the MGB, failure of the MGB, and subsequent loss of control of the helicopter, do the following:

(a) Within 60 days:

(1) Remove the MGB filter bowl assembly by following the Accomplishment Instructions, paragraphs 3.A. (1) through 3.A.(5), of Sikorsky Alert Service Bulletin No. 92–63–022A, dated December 18, 2009 (ASB).

(2) Remove the primary filter element, P/N 70351–38801–102, from the MGB lube system filter and visually inspect it for damage as depicted in Figures 1, 2, and 3 of the ASB. If the primary filter element has "wavy" pleats, internal buckling, or indented dimples, before further flight, replace it with an airworthy filter element.

(3) Visually inspect the secondary filter element, P/N 70351–38801–103, for damage as depicted in Figures 4 and 5 of the ASB. If the secondary filter element has "wavy" pleats or an elongated cup, before further flight, replace it with an airworthy filter element.

(4) Replace the MGB lube system filter assembly mounting studs:

(i) Remove the studs by following the Accomplishment Instructions, paragraphs 3.B.(1) through 3.B.(4) of the ASB. Visually inspect the tapped holes for any damage to the threads. Serrations on the entire counter bore (360 degrees) are acceptable. Serrations in the housing must be intact, and mating serrations on the lock ring must line up with serrations on the housing. Visually inspect the housing to determine that the housing threads are free from damage and corrosion. Visually inspect housing lockring counterbore to determine if the housing is airworthy.

(ii) If you find damage or corrosion to the housing threads, the housing, or the lockring counterbore, stop work and contact Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170.

(iii) If you do not find damage to the housing threads, the housing, or the lockring counterbore that requires repair, replace the mounting studs by following the Accomplishment Instructions, paragraphs 3.B.(7) through 3.B.(15) of the ASB.

(5) Install an airworthy, two-piece MGB filter bowl assembly modification kit, P/N 92070–35005–011, as depicted in Figures 8 and 9 of the ASB and by following the Accomplishment Instructions, paragraphs 3.C.(1) through 3.C.(20), of the ASB.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, *Attn:* Kirk Gustafson, Aviation Safety Engineer, Boston Aircraft Certification Office, Engine and Propeller Directorate, FAA, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7190, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

(c) The Joint Aircraft System/Component (JASC) Code is 6320: Main Rotor Gearbox.

(d) Inspecting and replacing the MGB filter bowl assembly shall be done by following the specified portions of Sikorsky Alert Service Bulletin No. 92–63–022A, dated December 18, 2009. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Sikorsky Aircraft Corporation, *Attn:* Manager, Commercial Technical Support, mailstop s581a, 6900 Main Street, Stratford, CT, telephone (203) 383–4866, e-mail address *tsslibrary@sikorsky.com*, or at *http://www.sikorsky.com*. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(e) This amendment becomes effective on June 21, 2010.

Issued in Fort Worth, Texas, on April 27, 2010.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2010–11069 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21242; Directorate Identifier 2005–NE–09–AD; Amendment 39–16288; AD 2010–10–09]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Arriel 1B, 1D, 1D1, and 1S1 Turboshaft Engines

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for certain Turbomeca Arriel 1B, 1D, 1D1, and 1S1 turboshaft engines. That AD requires initial and repetitive relative position checks of the gas generator 2nd stage turbine blades on Turbomeca Arriel 1B (that incorporate Turbomeca Modification (mod) TU 148), Arriel 1D, 1D1, and 1S1 turboshaft engines that do not incorporate mod TU 347. That AD also requires initial and repetitive replacements of 2nd stage turbines on Arriel 1B, 1D, and 1D1 engines. This AD requires lowering the initial and repetitive thresholds for replacement of 2nd stage turbines on Arriel 1B, 1D, and 1D1 engines. This AD results from reports of new cases of failures of 2nd stage turbine blades since we issued AD 2008–07–01. We are issuing this AD to prevent the failure of 2nd stage turbine blades, which could result in an uncommanded in-flight engine shutdown, and a subsequent forced autorotation landing or accident.

DATES: This AD becomes effective June 21, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 21, 2010.

ADDRESSES: You can get the service information identified in this AD from Turbomeca, 40220 Tarnos, France; telephone (33) 05 59 74 40 00, fax (33) 05 59 74 45 15.

The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: kevin.dickert@faa.gov; phone:* (781) 238–7117, *fax:* (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 by superseding AD 2008–07–01, Amendment 39–15442 (73 FR 15866, March 26, 2008), with a proposed AD. The proposed AD applies to Turbomeca Arriel 1B (that incorporate mod TU 148), 1D, 1D1, and 1S1 turboshaft engines that do not incorporate mod TU 347. We published the proposed AD in the **Federal Register** on March 10, 2010 (75 FR 11072). That action proposed to require lowering the repetitive threshold for relative position checks on Arriel 1B engines. That action also proposed to require lowering the initial and repetitive thresholds for replacement of 2nd stage turbines on Arriel 1B, 1D, and 1D1 engines.

Examining the AD Docket

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

Comments

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

Conclusion

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 587 Turbomeca Arriel 1B, 1D, 1D1, and 1S1 turboshaft engines installed on products of U.S. registry. We also estimate that it will take about 2 work-hours per engine to perform one inspection, and about 40 work-hours per engine to replace the gas turbine discs

and blades. The average labor rate is $85 per work-hour. Required parts will cost about $54,000 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be $33,793,590.

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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 39–15442 (73 FR 15866, March 26, 2008), and by adding a new airworthiness directive, Amendment 39–16288, to read as follows:

2010–10–09 Turbomeca: Amendment 39–16288. Docket No. FAA–2005–21242; Directorate Identifier 2005–NE–09–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 21, 2010.

Affected ADs

(b) This AD supersedes AD 2008–07–01, Amendment 39–15442.

Applicability

(c) This AD applies to Turbomeca Arriel 1B (that incorporate Turbomeca Modification (mod) TU 148), Arriel 1D, 1D1, and 1S1 engines that do not incorporate mod TU 347. Arriel 1B engines are installed on, but not limited to, Eurocopter AS–350B and AS–350BA "Ecureuil" helicopters. Arriel 1D engines are installed on, but not limited to, Eurocopter France AS–350B1 "Ecureuil" helicopters. Arriel 1D1 engines are installed on, but not limited to, Eurocopter France AS–350B2 "Ecureuil" helicopters. Arriel 1S1 engines are installed on, but not limited to, Sikorsky Aircraft Corporation S–76C helicopters.

Unsafe Condition

(d) This AD results from reports of new cases of failures of 2nd stage turbine blades since we issued AD 2008–07–01. We are issuing this AD to prevent the failure of 2nd stage turbine blades, which could result in an uncommanded in-flight engine shutdown, and a subsequent forced autorotation landing or accident.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Relative Position Check of 2nd Stage Turbine Blades

(f) Do an initial relative position check of the 2nd stage turbine blades using the Turbomeca Mandatory Service Bulletins (MSBs) specified in the following Table 1. Do the check before reaching any of the intervals specified in Table 1 or within 50 hours time-in-service after the effective date of this AD, whichever occurs later.

TABLE 1—INITIAL AND REPETITIVE RELATIVE POSITION CHECK INTERVALS OF 2ND STAGE TURBINE BLADE

Turbomeca engine model	Initial relative position check interval	Repetitive interval	Mandatory Service Bulletin
Arriel 1B (that incorporate mod TU 148), 1D1, and 1D.	Within 1,200 hours time-since-new (TSN) or time-since-overhaul (TSO) or 3,500 cycles-since-new (CSN) or cycles-since-overhaul (CSO), whichever occurs earlier.	Within 150 hours time-in-service-since-last-relative-position-check (TSLRPC).	A292 72 0807, Version E, dated October 29, 2009, paragraphs 2B(1)(a) and (b), or 2B(2)(a).
Arriel 1S1	Within 1,200 hours TSN or TSO or 3,500 CSN or CSO, whichever occurs earlier.	Within 150 hours TSLRPC	A292 72 0810, Version C, dated July 24, 2009, paragraphs 2B(1)(a) and (b), or 2B(2)(a), (b), and (c).

Repetitive Relative Position Check of 2nd Stage Turbine Blades

(g) Recheck the relative position of 2nd stage turbine blades at the TSLRPC intervals specified in Table 1 of this AD, using the Turbomeca MSBs indicated.

Credit for Previous Relative Position Checks

(h) Credit is allowed for previous relative position checks of 2nd stage turbine blades done using the following Turbomeca MSBs:

(1) MSB No. A292 72 0263, Update Nos. 1 through 5.

(2) MSB No. A292 72 0807, Original, and Update No. 1 through Version D.

(3) MSB No. A292 72 0809, Update No. 1.

(4) MSB No. A292 72 0810, Original, and Version A through Version B.

Initial Replacement of 2nd Stage Turbines on Arriel 1B Engines

(i) Initially replace the Arriel 1B 2nd stage turbine disk and blades with an inspected 2nd stage turbine that does not incorporate mod TU 347 and is fitted with new blades or with a 2nd stage turbine that incorporates mod TU 347, using Turbomeca MSB No. A292 72 0807, Version E, dated October 29, 2009, paragraphs 2B(1)(c) or (d), or 2B(2)(b) or (c), at the following times:

(1) Replace before further flight on engines with a 2nd stage turbine disk having accumulated more than 2,200 hours TIS since-new or since-last-inspection, whichever occurs later, or with 2nd stage turbine blades that have accumulated more than 3,000 hours TIS since-new.

(2) For engines with 2nd stage turbine blades having accumulated on the effective date of this AD, more than 1,800 hours TIS since-new, but 3,000 or fewer hours TIS since-new, replace before reaching any of the following:

(i) 400 hours TIS from the effective date of this AD, or

(ii) 3,000 hours TIS since-new on the 2nd stage turbine blades, or

(iii) 2,200 hours TIS since-new or since-last-inspection, whichever occurs later, on the 2nd stage turbine disk.

(3) For engines with 2nd stage turbine blades having accumulated on the effective date of this AD, more than 900 hours TIS since-new, but 1,800 or fewer hours TIS since-new, replace before reaching any of the following:

(i) 800 hours TIS from the effective date of this AD, or

(ii) 2,200 hours TIS since-new or since-last-inspection, whichever occurs later, on the 2nd stage turbine disk.

(4) For engines with 2nd stage turbine blades having accumulated on the effective date of this AD, 900 or fewer hours TIS since-new, replace before the 2nd stage turbine blades have accumulated 1,200 hours TIS since-new.

Repetitive Replacements of 2nd Stage Turbines on Arriel 1B Engines

(j) Thereafter, for 2nd stage turbines that do not incorporate mod TU 347, replace the 2nd stage turbine disk and blades before the blades have accumulated 1,200 hours TIS since-new.

Initial Replacement of 2nd Stage Turbines on Arriel 1D and 1D1 Engines

(k) Initially replace the Arriel 1D and 1D1 2nd stage turbine disk and blades with an inspected turbine that does not incorporate mod TU 347 and is fitted with new blades or with a turbine that incorporates mod TU 347, using Turbomeca MSB No. A292 72 0807, Version E, dated October 29, 2009, paragraphs 2B(1)(c) or (d), or 2B(2)(b) or (c), at the following times:

(1) Replace before further flight on engines with a 2nd stage turbine disk having accumulated more than 1,500 hours TIS since-new or since-last-inspection, whichever occurs later, or with 2nd stage turbine blades having accumulated more than 1,500 hours TIS since-new.

(2) For engines with 2nd stage turbine blades having accumulated on the effective date of this AD, more than 900 hours TIS since-new, but 1,500 or fewer hours TIS since-new, replace before the 2nd stage turbine blades have accumulated 1,500 hours TIS since-new, or before the 2nd stage turbine disk has accumulated 1,500 hours TIS since-new, whichever occurs first.

(3) For engines with 2nd stage turbine blades having accumulated on the effective date of this AD, 900 or fewer hours TIS since-new, replace before the 2nd stage turbine blades have accumulated 1,200 hours TIS since-new.

Repetitive Replacements of 2nd Stage Turbines on Arriel 1D and 1D1 Engines

(l) Thereafter, for 2nd stage turbines that do not incorporate mod TU 347, replace the 2nd stage turbine disk and blades before the blades have accumulated 1,200 hours TIS since-new.

Relative Position Check Continuing Compliance Requirements

(m) All 2nd stage turbines, including those that are new or overhauled, must continue to comply with the actions specified in paragraphs (f) and (g) of this AD, unless mod TU 347 has been incorporated.

Optional Terminating Action

(n) Installing a new turbine, P/N 0 292 25 039 0, (incorporation of mod TU 347) terminates the requirements to perform the repetitive actions specified in paragraphs (g), (j), and (l) of this AD.

Alternative Methods of Compliance

(o) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(p) The EASA airworthiness directive 2009–0236, dated October 29, 2009, also addresses the subject of this AD.

(q) Contact Kevin Dickert, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: kevin.dickert@faa.gov;* phone: (781) 238–7117, *fax:* (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(r) You must use the service information specified in the following Table 2 to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in the following Table 2 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Turbomeca, 40220 Tarnos, France; *phone:* (33) 05 59 74 40 00, *fax:* (33) 05 59 74 45 15, for a copy of this service information. You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

TABLE 2—INCORPORATION BY REFERENCE

Turbomeca mandatory Service Bulletin No.	Page	Version	Date
A 292 72 0807 ..... Total Pages: 20	ALL	E	October 29, 2009.
A 292 72 0810 ..... Total Pages: 15	ALL	C	July 24, 2009.

Issued in Burlington, Massachusetts, on April 28, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–10720 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0129; Directorate Identifier 2009–NM–245–AD; Amendment 39–16287; AD 2010–10–08]

RIN 2120–AA64

Airworthiness Directives; Airbus A318, A319, A320, A321 Series Airplanes

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

ACTION: Final rule.

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

Several occurrences of loss of the AC [alternating current] BUS 1 have been reported which led in some instances to the loss of the AC ESS [essential] BUS and DC [direct current] ESS BUS and connected systems. The affected systems include multiple flight deck Display Units (Primary Flight Display, Navigation Display and Upper Electronic Centralised Aircraft Monitoring display).

* * * * *

The loss of multiple display units, if not corrected expediently during a high workload period, potentially affects the capability of the flight crew and could contribute to a loss of situational awareness and consequent control of the aeroplane, which would constitute an unsafe condition.

* * * * *

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

DATES: This AD becomes effective June 21, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 21, 2010.

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

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on February 23, 2010 (75 FR 8003). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Several occurrences of loss of the AC [alternating current] BUS 1 have been reported which led in some instances to the loss of the AC ESS [essential] BUS and DC [direct current] ESS BUS and connected systems. The affected systems include multiple flight deck Display Units (Primary Flight Display, Navigation Display and Upper Electronic Centralised Aircraft Monitoring display).

The reasons for these events have been investigated but have not been fully established for all cases.

Due to the range of system losses some crews reported difficulty in establishing the failure cause during the events and, consequently, the appropriate actions to be taken may not be completed in a timely manner.

The loss of multiple display units, if not corrected expediently during a high workload period, potentially affects the capability of the flight crew and could contribute to a loss of situational awareness and consequent control of the aeroplane, which would constitute an unsafe condition.

This AD therefore mandates the modification of the electrical network configuration management logic consisting in adding an automatic switching of the AC and DC ESS BUS power supply such that upon the loss of the AC BUS 1, the AC BUS 2 will automatically take over the power supply. On pre-MOD aeroplanes, this power supply switching can only be accomplished manually from the cockpit and is covered by an Electronic Centralized Aircraft Monitoring (ECAM) procedure.

The modification of the electrical power distribution system includes, depending on the configuration, adding a new circuit breaker and new relay to the AC/DC ESS BUS circuit, and adding a diode between a certain relay and terminal block. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Support and Request to Reduce Compliance Time

The Airline Pilots Association, International (ALPA) supports this AD, and asks that the 48-month compliance time proposed in the NPRM be reduced to 24 months. ALPA states that, given the potentially serious consequences of the flightcrew experiencing a very high workload during a critical phase of flight, the compliance time should be reduced based on the number of events and the safety risk associated with BUS failures.

We do not agree that the compliance time should be reduced. In developing the compliance time for this AD action, we considered not only the safety implications of the identified unsafe condition, but the average utilization rate of the affected fleet, the practical aspects of modifying the fleet during the compliance time, and the availability of required parts. In addition, we have coordinated with the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community. We have determined that the 48-month compliance time to do the modification addresses the identified unsafe condition and ensures an adequate level of safety for the affected fleet. We have made no change to the AD in this regard.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 633 products of U.S. registry. We also estimate that it will take about 46 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $2,200 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $3,867,630, or $6,110 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–10–08 Airbus: Amendment 39–16287. Docket No. FAA–2010–0129; Directorate Identifier 2009–NM–245–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 21, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes; certificated in any category; all manufacturer serial numbers; except airplanes that have received Airbus modification 37317 in production.

Subject

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

Reason

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

Several occurrences of loss of the AC [alternating current] BUS 1 have been reported which led in some instances to the loss of the AC ESS [essential] BUS and DC [direct current] ESS BUS and connected systems. The affected systems include multiple flight deck Display Units (Primary Flight Display, Navigation Display and Upper Electronic Centralised Aircraft Monitoring display).

The reasons for these events have been investigated but have not been fully established for all cases.

Due to the range of system losses some crews reported difficulty in establishing the failure cause during the events and, consequently, the appropriate actions to be taken may not be completed in a timely manner.

The loss of multiple display units, if not corrected expediently during a high workload period, potentially affects the capability of the flight crew and could contribute to a loss of situational awareness and consequent control of the aeroplane, which would constitute an unsafe condition.

This AD therefore mandates the modification of the electrical network configuration management logic consisting in adding an automatic switching of the AC and DC ESS BUS power supply such that upon the loss of the AC BUS 1, the AC BUS 2 will automatically take over the power supply. On pre-MOD aeroplanes, this power supply switching can only be accomplished manually from the cockpit and is covered by an Electronic Centralized Aircraft Monitoring (ECAM) procedure.

The modification of the electrical power distribution system includes, depending on the configuration, adding a new circuit breaker and new relay to the AC/DC ESS BUS circuit, and adding a diode between a certain relay and terminal block.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 48 months after the effective date of this AD, modify the electrical power distribution system, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–24–1120, Revision 03, dated July 10, 2009.

(h) Actions accomplished before the effective date of this AD, in accordance with any service bulletin identified in Table 1 of this AD, are considered acceptable for compliance with the corresponding actions specified in this AD.

TABLE 1—CREDIT SERVICE INFORMATION

Airbus Service Bulletin—	Revision—	Dated—
A320–24–1120	Original	May 31, 2007.
A320–24–1120	01	December 19, 2007.
A320–24–1120	02	July 8, 2008.

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Tim Dulin, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2141; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(j) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2009–0235, dated October 29, 2009; and Airbus Service Bulletin A320–24–1120, Revision 03, dated July 10, 2009; for related information.

Material Incorporated by Reference

(k) You must use Airbus Service Bulletin A320–24–1120, Revision 03, dated July 10, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus, Airworthiness Office—EAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail: *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

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

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

Issued in Renton, Washington, on April 27, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–10722 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0792; Directorate Identifier 2009–NM–057–AD; Amendment 39–16300; AD 2010–10–21]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) Airplanes, Model CL–600–2D15 (Regional Jet Series 705) Airplanes, and Model CL–600–2D24 (Regional Jet Series 900) Airplanes

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

ACTION: Final rule.

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

Bombardier Aerospace has completed a system safety review of the CL–600–2C10/CL600–2D15/CL–600–2D24 aircraft fuel system against the new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action was required.

The assessment showed that certain hydraulic system failure scenarios could lead to a rapid overheat in the hydraulic lines without giving flight crew sufficient time to react before the No. 1 and No. 2 hydraulic system tubing inside the fuel tank reaches the fuel auto ignition temperature. This could result in a fuel tank explosion.

* * * * *

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

DATES: This AD becomes effective June 21, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 21, 2010.

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

FOR FURTHER INFORMATION CONTACT: Christopher Alfano, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7340; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 28, 2009 (74 FR 49346). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Bombardier Aerospace has completed a system safety review of the CL–600–2C10/CL600–2D15/CL–600–2D24 aircraft fuel system against the new fuel tank safety

standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action was required.

The assessment showed that certain hydraulic system failure scenarios could lead to a rapid overheat in the hydraulic lines without giving flight crew sufficient time to react before the No. 1 and No. 2 hydraulic system tubing inside the fuel tank reaches the fuel auto ignition temperature. This could result in a fuel tank explosion.

To correct the unsafe condition, this [Canadian airworthiness] directive mandates the installation of thermal fuses in the No. 1 and No. 2 hydraulic systems and the introduction of Fuel System Limitations (FSL) and Critical Design Configuration Control Limitations (CDCCL) associated with this design change.

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

Comments

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

Support for the NPRM

The Air Line Pilots Association (ALPA) supports the proposed AD.

Request To Delay Rule Until Updated Service Information Is Released

American Eagle Airlines (American Eagle) requests that we incorporate updated service information into the NPRM. American Eagle states that during the accomplishment of Bombardier Service Bulletin 670BA–29–005, Revision A, dated January 29, 2009 (which specifies the accomplishment of Mitsubishi Service Bulletin 670MM–29–006, Revision A, dated February 12, 2009) (which was referred to in the NPRM as the appropriate source of service information for the proposed actions), several issues were found, including part numbers called out in these service bulletins that have been superseded by new part numbers included in a kit, an incorrect location specified for bracket installation, and the need for alternate fasteners. American Eagle requests that a revised service bulletin correcting these issues be released and incorporated into the NPRM with credit given for actions accomplished in accordance with earlier versions of the service bulletins. American Eagle states that this will greatly reduce the number of requests for alternative methods of compliance (AMOCs) and possible instances of non-compliance.

We find that clarification is necessary. We contacted Bombardier to inquire as to the status of updating the service information. However, no estimated date for releasing updated service information could be provided at this time. We do not agree that it is necessary to wait to issue this final rule until the manufacturer updates Bombardier Service Bulletin 670BA–29–005. To further delay the issuance of this AD would be inappropriate, since we have determined that an unsafe condition exists and that the required actions must be done to ensure continued safety.

We note that Bombardier has issued Service Non-Incorporated Engineering Order (SNIEO) KMM670–75007, Identifier S01, dated September 3, 2009, which permits installation of certain fasteners, and SNIEO KMM670–75007, Identifier S02, dated September 11, 2009, which permits installation of the left-side bracket on the right (and vice versa). For clarification purposes, we added a new Note 2 to this final rule to specify that guidance for accomplishing the modification required by paragraph (f)(1) of this AD can be found in the SNIEOs.

In addition, paragraph (f)(5) of this AD gives credit for actions accomplished in accordance with Bombardier Service Bulletin 670BA–29–005, dated December 18, 2008.

Explanation of Change Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Explanation of Change to Costs of Compliance

After the NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $80 per work hour to $85 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect 334 products of U.S. registry. We also estimate that it will take about 45 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $6,765 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $3,537,060, or $10,590 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between

the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–10–21 Bombardier, Inc.: Amendment 39–16300. Docket No. FAA–2009–0792; Directorate Identifier 2009–NM–057–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 21, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, certificated in any category, having serial numbers 10003 through 10267 inclusive; and Bombardier Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category, having serial numbers 15001 through 15199 inclusive, 15202, and 15204.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (g) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic power.

Reason

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

Bombardier Aerospace has completed a system safety review of the CL–600–2C10/CL600–2D15/CL–600–2D24 aircraft fuel system against the new fuel tank safety standards, introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043. The identified non-compliances were assessed using Transport Canada Policy Letter No. 525–001 to determine if mandatory corrective action was required.

The assessment showed that certain hydraulic system failure scenarios could lead to a rapid overheat in the hydraulic lines without giving flight crew sufficient time to react before the No. 1 and No. 2 hydraulic system tubing inside the fuel tank reaches the fuel auto ignition temperature. This could result in a fuel tank explosion.

To correct the unsafe condition, this [Canadian airworthiness] directive mandates the installation of thermal fuses in the No. 1 and No. 2 hydraulic systems and the introduction of Fuel System Limitations (FSL) and Critical Design Configuration Control Limitations (CDCCL) associated with this design change.

Actions and Compliance

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

(1) Within 6,000 flight hours after the effective date of this AD, modify the aircraft hydraulic system by installing thermal fuses according to the Accomplishment Instructions of Bombardier Service Bulletin 670BA–29–005, Revision A, dated January 29, 2009.

Note 2: Guidance for accomplishing the modification required by paragraph (f)(1) of this AD can be found in Bombardier Service Non-Incorporated Engineering Order (SNIEO) KMM670–75007, Identifier S01, dated September 3, 2009, and SNIEO KMM670–75007, Identifier S02, dated September 11, 2009.

(2) Before or concurrently with the actions required by paragraph (f)(1) of this AD, revise the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness to incorporate the tasks identified in Table 1 of this AD as specified in Bombardier Temporary Revision (TR) 2–269, dated December 18, 2008, to Section 3, "Fuel Systems Limitations," of Part 2 of the Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual. The initial compliance time for the task is within 10,000 flight hours after doing the action required by paragraph (f)(1) of this AD, or within 60 days after the effective date of this AD, whichever occurs later, and the limitation task must be accomplished thereafter at the "limiting interval" specified in Bombardier TR 2–269, dated December 18, 2008, except as provided by paragraphs (f)(4) and (g)(1) of this AD.

TABLE 1—FUEL SYSTEM LIMITATION TASK

Task No.	Task description
29–30–00–603.	Hydraulic System No. 1 and No. 2 Thermal Fuse: Discard the system No. 1 and No. 2 thermal fuse (Post Modsum 670T112042 or SB 670BA–29–005).

(3) Before or concurrently with the actions required by paragraph (f)(1) of this AD, revise the ALS of the Instructions for Continued Airworthiness to incorporate the CDCCL data specified in Bombardier TR 2–268, dated December 18, 2008, to Section 3, "Fuel System Limitations," of Part 2 of the Bombardier CL–600–2C10, CL–600–2D15 and CL–600–2D24 Maintenance Requirements Manual.

Note 3: The actions required by paragraphs (f)(2) and (f)(3) of this AD may be done by inserting a copy of the TR into the maintenance requirements manual. When the TR has been included in the general revision of the maintenance program, the general revision may be inserted into the maintenance requirements manual, provided the relevant information in the general revision is identical to that in the TR, and the TR may be removed.

(4) After accomplishing the actions specified in paragraphs (f)(2) and (f)(3) of this AD, no alternative limitation tasks, limitation task intervals, or CDCCLs may be used unless the limitation task, limitation task interval, or CDCCL is approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (g)(1) of this AD.

(5) Actions accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 670BA–29–005, dated December 18, 2008, are considered acceptable for compliance with the corresponding action specified in paragraph (f)(1) of this AD.

Note 4: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before the revision of the ALS, as required by paragraphs (f)(2) and (f)(3) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the ALS has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

FAA AD Differences

Note 5: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York, 11590; telephone 516–228–7300; fax 516–794–5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(h) Refer to MCAI Canadian Airworthiness Directive CF–2009–09, dated March 9, 2009; Bombardier Service Bulletin 670BA–29–005, Revision A, dated January 29, 2009; and Bombardier TR 2–268 and Bombardier TR 2–269, both dated December 18, 2008, both to Section 3, "Fuel System Limitations," of Part 2 of the Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual; for related information.

Material Incorporated by Reference

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

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Bombardier Service Bulletin 670BA–29–005	A	January 29, 2009.
Bombardier Temporary Revision 2–268 to Section 3, "Fuel System Limitations," of Part 2 of the Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual.	Original	December 18, 2008.
Bombardier Temporary Revision 2–269 to Section 3, "Fuel System Limitations," of Part 2 of the Bombardier CL–600–2C10, CL–600–2D15, and CL–600–2D24 Maintenance Requirements Manual.	Original	December 18, 2008.

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

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

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

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

Issued in Renton, Washington on May 3, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11183 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1254; Directorate Identifier 2009–NM–040–AD; Amendment 39–16292; AD 2010–10–13]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A Airplanes

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

ACTION: Final rule.

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

During the removal of the wing removable leading edge on a BAe 146 aircraft for a repair (not related to the subject addressed by this AD), corrosion was found on the wing fixed leading edge structure. The investigation determined that the existing scheduled environmental and fatigue inspections would not have detected the corrosion or fatigue damage.

Corrosion or fatigue damage in this area, if not detected and corrected, could lead to degradation of the structural integrity of the wing.

* * * * *

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

DATES: This AD becomes effective June 21, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of June 21, 2010.

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

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton,

Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 12, 2010 (75 FR 1560). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During the removal of the wing removable leading edge on a BAe 146 aircraft for a repair (not related to the subject addressed by this AD), corrosion was found on the wing fixed leading edge structure. The investigation determined that the existing scheduled environmental and fatigue inspections would not have detected the corrosion or fatigue damage.
>
> Corrosion or fatigue damage in this area, if not detected and corrected, could lead to degradation of the structural integrity of the wing.
>
> For the reason described above, this AD requires repetitive inspections of the wing fixed leading edge and front spar structure for corrosion and/or fatigue damage [*e.g.,* cracking] and repair, depending on findings.

There are two alternative inspection methods: Method 1 is a combination of a detailed visual inspection and a visual inspection; Method 2 is a detailed visual inspection. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Clarification of Compliance Time Language

We have revised paragraph (f)(1)(iii) of this AD to clarify the compliance time language as specified in Note 4 of this AD.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD will affect 1 product of U.S. registry. We also estimate that it will take about 12 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operator to be $1,020.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–10–13 BAE Systems (Operations) Limited: Amendment 39–16292. Docket No. FAA–2009–1254; Directorate Identifier 2009–NM–040–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 21, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category, all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

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

During the removal of the wing removable leading edge on a BAe 146 aircraft for a repair (not related to the subject addressed by this AD), corrosion was found on the wing fixed leading edge structure. The investigation determined that the existing scheduled environmental and fatigue inspections would not have detected the corrosion or fatigue damage.

Corrosion or fatigue damage in this area, if not detected and corrected, could lead to degradation of the structural integrity of the wing.

For the reason described above, this AD requires repetitive inspections of the wing fixed leading edge and front spar structure for corrosion and/or fatigue damage [*e.g.,* cracking] and repair, depending on findings. There are two alternative inspection methods: Method 1 is a combination of a detailed visual inspection and a visual inspection; Method 2 is a detailed visual inspection.

Actions and Compliance

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

(1) At the applicable time identified in paragraph (f)(1)(i), (f)(1)(ii), or (f)(1)(iii) of this AD: Perform a detailed visual inspection and visual inspection (Method 1) or a detailed visual inspection (Method 2) for cracking and corrosion of the wing fixed leading edge and front spar structure, in accordance with paragraph 2.C. or 2.D., as applicable, of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008.

(i) For airplanes with less than 9 years since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness as of the effective date of this AD: Within 18 months after the effective date of this AD.

(ii) For airplanes with 9 years or more, but less than 15 years, since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness as of the effective date of this AD: Within 18 months after the effective date of this AD or within 16 years since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness, whichever occurs first.

(iii) For airplanes with 15 years or more since date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness as of the effective date of this AD: Within 6 months after the effective date of this AD.

Note 1: Where BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008, refers to a "visual inspection," this term describes an inspection using visual inspection equipment as defined in Appendix 3 of that service bulletin. In other BAE Systems instructions for continued airworthiness, including the Maintenance Planning Document (MPD) and the Corrosion Prevention and Control Programme (CPCP), such an inspection is referred to as a "Special Detailed Inspection" (SDI).

Note 2: At the discretion of the airplane owner/operator, corrosion protection may be embodied on those areas subject to a detailed visual inspection, in accordance with paragraph 2.E. or paragraph 2.F. of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008. Embodiment of enhanced corrosion protection in accordance with paragraph 2.E. of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008, allows the interval of the repetitive inspection (as required by paragraph (f)(2) of this AD) to be extended in the area(s) of application in accordance with paragraph (f)(2)(i) or (f)(2)(ii) of this AD, as applicable.

(2) After doing the initial inspection required by paragraph (f)(1) of this AD, at the applicable intervals specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, accomplish the repetitive inspections of the wing fixed leading edge and front spar structure for cracking and corrosion in the "area of inspection" specified in Table 1 of paragraph 1.D., "Compliance," of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008. Do the inspections in accordance with paragraph 2.C. (Method 1) or paragraph 2.D. (Method 2) of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008. Where previously applied, enhanced corrosion protection may then be re-applied, as an option, in accordance with paragraph 2.E. of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008. Perform the repetitive inspections at the times specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD, as applicable.

(i) For airplanes having enhanced corrosion protection that was applied during the previous inspection: Inspect at intervals not to exceed 144 months.

(ii) For airplanes not having enhanced corrosion protection that was applied during the previous inspection: Inspect at intervals not to exceed 72 months.

(3) After doing the initial inspection required by paragraph (f)(1) of this AD, at intervals not to exceed 36,000 flight cycles, accomplish fatigue inspections in accordance with paragraph 2.C. (Method 1) or paragraph 2.D. (Method 2) of the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008.

(4) If any cracking or corrosion is found during any inspection required by this AD, before further flight, repair in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008.

(5) No repair terminates the inspection requirements of this AD.

(6) Actions done before the effective date of this AD in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, dated February 22, 2008, are considered acceptable for compliance with the corresponding actions specified in this AD.

(7) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (f)(1) of this AD to Customer Liaison, Customer Support (Building 37), BAE Systems (Operations) Limited, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; fax +44 (0) 1292 675432; e-mail *raengliaison@baesystems.com,* at the applicable time specified in paragraphs (f)(7)(i) and (f)(7)(ii) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Note 3: The inspections required by this AD prevail over the Maintenance Review Board Report (MRBR), MPD, CPCP, and Supplemental Structural Inspection Document (SSID) inspections defined in paragraph 1.C.(3) of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: Where the EASA AD refers to "since entry into service," this AD specifies the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0014, dated January 21, 2009; and BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008; for related information.

Material Incorporated by Reference

(i) You must use BAE Systems (Operations) Limited Inspection Service Bulletin ISB.57–072, Revision 1, dated September 25, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact BAE Systems Regional Aircraft, 13850 McLearen Road, Herndon, Virginia 20171; telephone 703–736–1080; e-mail *raebusiness@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

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

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

Issued in Renton, Washington, on April 30, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–11182 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0158; Directorate Identifier 2010–CE–006–AD; Amendment 39–16289; AD 2010–10–10]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation (Type Certificate No. A00010WI Previously Held by Raytheon Aircraft Company) Model 390 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Hawker Beechcraft Corporation Model 390 airplanes. This AD requires you to inspect the essential bus lightning strike protection for proper installation of metal oxide varistor (MOV) and spark gap wiring. This AD also requires you to rework the wiring as necessary to achieve the required lightning strike/surge protection. This AD results from a report that the wires to the MOV and spark gap were swapped. We are issuing this AD to detect and correct improper installation of the MOV and spark gap wiring, which could result in overload of the MOV in a lightning strike and allow electrical energy to continue to the essential bus and disable equipment that receives power from the essential bus. The disabled equipment could include the autopilot, anti-skid system, hydraulic indicator, spoiler system, pilot primary flight display, audio panel, or the #1 air data computer. This failure could lead to a significant increase in pilot workload during adverse operating conditions.

DATES: This AD becomes effective on June 21, 2010.

On June 21, 2010, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: For service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67201; *telephone:* (316) 676–5034; *fax:* (316) 676–6614; *Internet: https://www.hawkerbeechcraft.com/service_support/pubs/.*

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2010–0158; Directorate Identifier 2010–CE–006–AD.

FOR FURTHER INFORMATION CONTACT: Kevin Schwemmer, Aerospace Engineer, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946–4174; *fax:* (316) 946–4107; *e-mail: kevin.schwemmer@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On February 16, 2010, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Hawker Beechcraft Corporation Model 390 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 23, 2010 (75 FR 8001). The NPRM proposed to require you to inspect the essential bus lightning strike protection for proper installation of metal oxide varistor (MOV) and spark gap wiring. The NPRM also proposed to require you to rework the wiring as necessary to achieve the required lightning strike/surge protection.

Comments

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

Conclusion

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

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

Costs of Compliance

We estimate that this AD affects 170 airplanes in the U.S. registry.

We estimate the following costs to do the inspection (includes any necessary follow-on action):

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
3 work-hours × $85 per hour = $255	Not applicable	$255	$43,350

Warranty credit may be given to the extent specified in Hawker Beechcraft Mandatory Service Bulletin SB 24–3995, issued September 2009.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA–2010–0158; Directorate Identifier 2010–CE–006–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2010–10–10 Hawker Beechcraft Corporation (Type Certificate No. A00010WI Previously Held by Raytheon Aircraft Company): Amendment 39–16289; Docket No. FAA–2010–0158; Directorate Identifier 2010–CE–006–AD.

Effective Date

(a) This AD becomes effective on June 21, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model 390 airplanes, serial numbers RB–4 through RB–248, that are certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from a report that the metal oxide varistor (MOV) and spark gap wiring of the essential bus lightning strike protection were swapped. We are issuing this AD to detect and correct improper installation of the MOV and spark gap wiring, which could result in overload of the MOV in a lightning strike and allow electrical energy to continue to the essential bus and disable equipment that receives power from the essential bus. The disabled equipment could include the autopilot, anti-skid system, hydraulic indicator, spoiler system, pilot primary flight display, audio panel, or the #1 air data computer. This failure could lead to a significant increase in pilot workload during adverse operating conditions.

Compliance

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

Actions	Compliance	Procedures
(1) Inspect the essential bus lightning strike protection for proper installation of MOV and spark gap wiring.	Within the next 200 hours time-in-service after June 21, 2010 (the effective date of this AD) or within the next 12 months after June 21, 2010 (the effective date of this AD), whichever occurs first.	Follow Hawker Mandatory Service Bulletin SB 24–3995, issued September 2009.
(2) Where improper wiring installation is found, rework the essential bus lightning strike wiring installation for the MOV and spark gap.	Before further flight after the inspection in paragraph (f)(1) of this AD.	Follow Hawker Mandatory Service Bulletin SB 24–3995, issued September 2009.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Wichita Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Kevin Schwemmer, Aerospace Engineer, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946–4174; *fax:* (316) 946–4107; *e-mail: kevin.schwemmer@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(h) You must use Follow Hawker Mandatory Service Bulletin SB 24–3995, issued September 2009, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Hawker Beechcraft Corporation, 9709 East Central, Wichita, Kansas 67201; *telephone:* (316) 676–5034; *fax:* (316) 676–6614; *Internet: https://www.hawkerbeechcraft.com/service_support/pubs/*.

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

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

Issued in Kansas City, Missouri, on April 30, 2010.

Steven W. Thompson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–10717 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1066; Directorate Identifier 2009–NM–028–AD; Amendment 39–16284; AD 2010–10–05]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SR, and 747SP Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Model 747 airplanes. That AD currently requires repetitive inspections to detect cracking in certain fuselage skin lap joints, and repair if necessary. This new AD expands the inspection area in the existing AD, adds a modification of certain lap joints, and adds certain post-repair inspections of the lap joints. Accomplishing the modification ends the repetitive inspections required by the existing AD for the length of lap joint that is modified. This AD results from a structural review of affected skin lap joints for widespread fatigue damage. We are issuing this AD to prevent fatigue cracking in certain lap joints, which could result in rapid depressurization of the airplane.

DATES: This AD becomes effective June 21, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of June 21, 2010.

On July 13, 1994 (59 FR 30277, June 13, 1994), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD.

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 94–12–04, Amendment 39–8932 (59 FR 30277, June 13, 1994). The existing AD applies to certain Model 747 airplanes. That NPRM was published in the **Federal Register** on November 18, 2009 (74 FR 59488). That NPRM proposed to continue to require repetitive inspections to detect cracking in certain fuselage skin lap joints, and repair if necessary. That NPRM also proposed to expand the inspection area in the existing AD, add a modification of certain lap joints, and add certain post-repair inspections of the lap joints. That NPRM specified that accomplishing the modification would end the repetitive inspections required by the existing AD for the length of lap joint that is modified.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request for Certain Clarifications

Boeing asks that we provide the following clarifications:

- Include language in paragraph (c) of the NPRM which specifies that airplanes having line number 629, 635, 637, 650, 666, 667, 673, 675, 683, 713, 750, or 810 are Group 5 airplanes. Boeing states that after Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009, was released, it was determined that these airplanes do not have a lower lobe air stair door and should have been included in Group 5, not Group 10.

We agree with Boeing's request for the reason provided. The airplane grouping is incorrect in Boeing Alert Service Bulletin 747–53A2367, Revision 2, dated October 30, 2008, and Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009. Therefore, we have added a new Note 1 after paragraph (c) of this AD to clarify the correct airplane grouping for airplanes having the identified line numbers.

- Change the term "Delegation Option Authorization" (DOA) to "Organization Designation Authorization" (ODA) throughout the NPRM.

We agree. Boeing Commercial Airplanes has received an Organization Designation Authorization (ODA), which replaces the previous designation as a Delegation Option Authorization (DOA) holder. We have changed paragraph (m)(3) of this AD to add delegation of authority to Boeing Commercial Airplanes ODA to approve an alternative method of compliance for any repair required by this AD.

- Change the Discussion section of the NPRM to note that AD 2009–04–16, Amendment 39–15822 (74 FR 8737, February 26, 2009), supersedes AD 2008–10–15, Amendment 39–15522 (73 FR 29042, May 20, 2008). Although we agree that AD 2009–04–16 superseded AD 2008–10–15, the discussion section of the NPRM is not carried over to this final rule. Therefore, we have made no change to the AD in this regard.

• Change the terminating action language specified in paragraph (j) of the NPRM to add the following at the end of the last sentence in that paragraph: "* * * for a period of 15,000 flight cycles. Additional work is required for continued operation beyond 15,000 flight-cycles after the modification." Boeing states that a post-modification inspection is specified in a note following Table 2 of paragraph 1.E. of Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009.

We do not agree with Boeing's request. The note following Table 2 of paragraph 1.E. of the service bulletin specifies that additional work is required for continued operation beyond 15,000 flight cycles after the modification, and that Boeing must be contacted for instructions. Considering the compliance time of 30,000 total flight cycles for the modification, and the compliance time for additional work, we have determined that rulemaking on the undefined additional work is not necessary at this time. We will consider future rulemaking once the additional work is defined. We have made no change to the AD in this regard.

• Add a new paragraph (j)(1) to the NPRM to state that at all lap joint areas not covered by the modification required by paragraph (j) of this AD, a lap joint modification must be installed at 35,000 total flight cycles. Boeing states that the NPRM should reflect the structural modification point (SMP) for all lap splices not modified by Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009, as stated on page 26, section 1.D., Note 7, of that service bulletin.

We do not agree with Boeing's request. Notes in the Description section of a service bulletin are considered informational only. In addition, the subject note specifies modification of all lap joints not covered by the modification specified in Boeing Service Bulletin 747–53A2367. The compliance time specified in that note in Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009, is 35,000 total flight cycles, and Boeing is not planning to provide engineering drawings for that modification. Modification of those lap joints is not included in this AD. We will consider future rulemaking when modification procedures are available. We have made no change to the AD in this regard.

Explanation of Change Made to This AD

We have changed this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

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

Explanation of Change to Costs of Compliance

After the NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $80 per work hour to $85 per work hour. The cost impact information, below, reflects this increase in the specified hourly rate.

Costs of Compliance

There are 209 airplanes of the affected design in the worldwide fleet. This AD affects about 69 airplanes of U.S. registry.

The actions that are required by AD 94–12–04 and retained in this AD take about 14 work hours per airplane, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $1,190 per airplane, per inspection cycle.

The new Area 2 inspections take up to 477 work hours per airplane, depending on airplane configuration, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the new inspections specified in this AD for U.S. operators is up to $2,797,605, or up to $40,545 per airplane, per inspection cycle.

The new modification takes about 171 work hours per airplane, at an average labor rate of $85 per work hour. Required parts cost per airplane will be minimal. Based on these figures, the estimated cost of the new actions specified in this AD for U.S. operators is $1,002,915, or $14,535, per airplane.

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing Amendment 39–8932 (59 FR 30277, June 13, 1994) and by adding the following new airworthiness directive (AD):

2010–10–05 The Boeing Company: Amendment 39–16284. Docket No. FAA–2009–1066; Directorate Identifier 2009–NM–028–AD.

Effective Date

(a) This AD becomes effective June 21, 2010.

Affected AD

(b) This AD supersedes AD 94–12–04, Amendment 39–8932.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–300, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009.

Note 1: Airplanes having line number 629, 635, 637, 650, 666, 667, 673, 675, 683, 713, 750, or 810 are Group 5 airplanes.

Subject

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

Unsafe Condition

(e) This AD results from a structural review of affected skin lap joints for widespread fatigue damage. The Federal Aviation Administration is issuing this AD to prevent fatigue cracking in certain lap joints, which could result in rapid depressurization of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 94–12–04, With Revised Service Information

Repetitive Inspections

(g) For airplanes identified in Boeing Service Bulletin 747–53–2367, dated December 18, 1991: Prior to the accumulation of 22,000 full pressure flight cycles (or, if the external skin panel of an affected lap joint has been replaced, prior to the accumulation of 22,000 full pressure flight cycles since skin replacement), or within 1,000 landings after July 13, 1994 (the effective date of AD 94–12–04), whichever occurs later, perform an external surface high frequency eddy current (HFEC) inspection of the skin around the upper row of fasteners, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53–2367, dated December 18, 1991; Boeing Service Bulletin 747–53–2367, Revision 1, dated January 27, 1994; Boeing Alert Service Bulletin 747–53A2367, Revision 2, dated October 30, 2008; or Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009. As of the effective date of this AD, only Revision 3 may be used.

(1) If no crack is found, repeat the inspection thereafter at intervals not to exceed 3,000 full pressure flight cycles until the inspections required by paragraph (h) of this AD are done.

(2) If any crack is found, accomplish paragraphs (g)(2)(i) and (g)(2)(ii) of this AD.

(i) Prior to further flight, perform an open hole HFEC inspection to detect cracking in the upper row fastener holes between the adjacent frames, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53–2367, dated December 18, 1991; Boeing Service Bulletin 747–53–2367, Revision 1, dated January 27, 1994; Boeing Alert Service Bulletin 747–53A2367, Revision 2, dated October 30, 2008; or Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009. Prior to further flight, repair any crack found, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Note 2: Guidance on repairing cracking can be found in Chapter 53–30–03 of the Boeing 747 Structural Repair Manual.

(ii) Repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 3,000 full pressure flight cycles until the inspections required by paragraph (h) of this AD are done.

New Requirements of This AD

Repetitive Inspections/Investigative and Corrective Actions

(h) For all airplanes: Do initial and repetitive HFEC inspections for cracks of lap joints in Sections 41, 42, 44, and 46, by doing all the actions, including all applicable related investigative and corrective actions, specified in the Accomplishment Instructions of Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009, except as provided by paragraph (l) of this AD. Do the inspections at the applicable times specified in paragraph 1.E. of Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009, except as required by paragraph (k) of this AD. Do all applicable related investigative and corrective actions before further flight. Accomplishing the inspections required by this paragraph ends the repetitive inspections required by paragraph (g) of this AD. Do the actions required by paragraph (h) of this AD until the modification required by paragraph (j) of this AD is done.

(i) For areas on which a lap joint repair was installed and the repair doubler is greater than or equal to 40 inches long: Do initial and repetitive internal HFEC inspections for cracks, as required by paragraph (h) of this AD, by doing all the applicable actions, including applicable corrective actions, specified in the Accomplishment Instructions of Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009, except as provided by paragraph (l) of this AD. Do the inspection and corrective actions at the times specified in paragraph 1.E. of Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009, except as required by paragraph (k) of this AD.

Terminating Action

(j) Before the accumulation of 30,000 total flight cycles or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Modify the applicable lap joints in Sections 41 and 42 by doing all the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009, except as required by paragraph (l) of this AD. Accomplishing this modification terminates the repetitive inspection requirements of this AD for the length of lap joint that is modified.

Exceptions to Boeing Service Bulletin 747–53A2367, Revision 3, Dated January 15, 2009

(k) Where Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009, specifies compliance times "from the date on the original issue of this service bulletin [12/18/91]," this AD requires compliance within the specified compliance time after July 13, 1994 (the effective date of AD 94–12–04). Where Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009, specifies compliance times "after the date on Revision 2 of this service bulletin [10/30/08]," this AD requires compliance within the specified compliance time after the effective date of this AD.

(l) Where Boeing Service Bulletin 747–53A2367, Revision 3, dated January 15, 2009, specifies to contact Boeing for repair or modification instructions: Before further flight, repair or modify using a method approved in accordance with the procedures specified in paragraph (m) of this AD.

Alternative Methods of Compliance (AMOCs)

(m)(1) The Manager, Seattle ACO, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6437; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

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

(4) AMOCs approved previously in accordance with AD 94–12–04 are approved as alternative methods of compliance with the corresponding requirements of this AD.

Material Incorporated by Reference

(n) You must use the service information specified in Table 1 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 1—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Boeing Alert Service Bulletin 747–53A2367	2	October 30, 2008.
Boeing Service Bulletin 747–53–2367	Original	December 18, 1991.
Boeing Service Bulletin 747–53–2367	1	January 27, 1994.
Boeing Service Bulletin 747–53A2367	3	January 15, 2009.

(1) The Director of the Federal Register approved the incorporation by reference of the Boeing service information specified in Table 2 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 2—NEW MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Boeing Alert Service Bulletin 747–53A2367	2	October 30, 2008.
Boeing Service Bulletin 747–53A2367	3	January 15, 2009.

(2) The Director of the Federal Register previously approved the incorporation by reference of the Boeing service information contained in Table 3 of this AD on July 13, 1994 (59 FR 30277, June 13, 1994).

TABLE 3—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Document	Revision	Date
Boeing Service Bulletin 747–53–2367	Original	December 18, 1991.
Boeing Service Bulletin 747–53–2367	1	January 27, 1994.

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

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

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

Issued in Renton, Washington, on April 27, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–10875 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0007; Airspace Docket No. 09–AAL–20]

Amendment of Jet Route J–120; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Jet Route J–120, in Alaska. The FAA is taking this action in preparation of the eventual decommissioning of the Barter Island (BTI) Non-directional Beacon (NDB) at the Village of Kaktovik, Alaska. This action ensures the safe and efficient use of the airspace within the National Airspace System (NAS).

DATES: Effective date 0901 UTC, July 29, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On February 9, 2010, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Jet Route J–120, in Alaska (75 FR 6320). The Barter Island NDB is scheduled for decommissioning, and will make the northern end (from Fort Yukon VORTAC to BTI) of this route unusable. Two Area Navigation T Routes (T–228, T–273) have been added to the NAS to service the Barter Island area. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal. No comments were received. The amendment is adopted as proposed.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Jet Route J–120, Alaska. The segment from the Fort Yukon VORTAC to the BTI NDB will be removed due to decommissioning of the BTI NDB.

Jet routes are published in paragraph 2004 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Jet route listed in this

document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding 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 promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends a Jet Route in Alaska.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, Environmental Impacts: Polices and Procedures, paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is to be amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–120 [Revised]

From Mt. Moffett, AK, NDB, via St. Paul Island, AK, NDB; Bethel, AK; McGrath, AK; Fairbanks, AK; to Fort Yukon, AK.

Issued in Washington, DC, on May 6, 2010.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. 2010–11495 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

Safety Standards for Steel Erection

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment adds a nonmandatory note to the OSHA standards governing steel erection. The note provides information regarding existing Federal Highway Administration regulations that may apply to employers engaged in activities covered by OSHA's steel erection standards.

DATES: *Effective date:* May 17, 2010.

FOR FURTHER INFORMATION CONTACT: *General information and press inquiries:* Ms. Jennifer Ashley, Office of Communications, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–1999.

Technical inquiries: Contact Mr. Levon Schlichter, Directorate of Construction, Room N–3468, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2020 or fax (202) 693–1689.

Electronic copies of this ***Federal Register*** *notice:* Go to OSHA's Web site (*http://www.osha.gov*), and select "**Federal Register**," "Date of Publication," and then "2010."

SUPPLEMENTARY INFORMATION:

Background. On May 15, 2004, a fatal highway accident occurred on an interstate highway in Colorado as a passenger vehicle passed under an overpass that was being widened. The bracing used to temporarily support a partially installed steel girder on the overpass collapsed, causing the girder to fall to the highway below, shearing off the top of the vehicle and killing the three occupants inside. The National Transportation Safety Board (NTSB) subsequently investigated the accident and determined that the probable cause was insufficient design and installation of the girder's temporary bracing system. NTSB also found that a Registered Engineer did not approve the bracing-system design, which violates Federal Highway Administration (FHWA) regulations (*See* discussion in the following paragraph).[1]

FHWA regulations generally require employers involved in National Highway System construction projects to comply with a number of standards, policies, and standard specifications published by the American Association of State Highway and Transportation Officials ("AASHTO"), among other organizations (*See* 23 CFR 625.3, 625.4). FHWA also encourages compliance with AASHTO Specifications that the FHWA regulations do not currently incorporate by reference. (*See http://www.fhwa.dot.gov/bridge/lrfd/index.htm.*)

For projects involving bridge construction (*e.g.,* temporary bracing systems), the FHWA regulations incorporate by reference AASHTO's Standard Specifications for Highway Bridges, 15th edition, 1992 (*See* 23 CFR 625.4). The 1992 Specifications provide that a Registered Engineer must prepare and seal working drawings for falsework in many cases.

OSHA believes that knowledge of these requirements will enhance the safety of employees operating on or near structural steel elements used in highway construction, including bridges and other structures. Therefore, OSHA is adding a note to 29 CFR 1926.754(a) to inform construction employers of the FHWA requirements.

[1] The NTSB published the findings of this investigation in NTSB Safety Recommendation H–06–23, June 29, 2006; *see* "Technical Inquiries" mentioned earlier to obtain a copy of this document.

Public participation. OSHA determined that this technical amendment is not subject to the procedures for public notice and comment specified by Section 4 of the Administrative Procedures Act (5 U.S.C. 553), Section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)), and 29 CFR 1911.5. This technical amendment of 29 CFR 1926.754(a) merely notifies the regulated community of existing Federal regulations; it is nonmandatory and disseminated for informational purposes only, and does not increase regulatory burden. Therefore, this technical amendment does not affect or change any existing rights or obligations, and no member of the regulated community is likely to object to it. In conclusion, OSHA finds good cause that the opportunity for public comment is unnecessary within the meaning of 5 U.S.C. 553(b)(3)(B), 29 U.S.C. 655(b), and 29 CFR 1911.5.

List of Subjects in 29 CFR Part 1926

Structural steel erection, Construction industry, Construction safety, Occupational Safety and Health Administration, Occupational safety and health.

Authority and Signature

This document was prepared under the authority of David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, pursuant to Sections 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order 5–2007 (72 FR 31160), and 29 CFR part 1911.

Signed at Washington, DC, on May 4, 2010.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

■ For the reasons set forth above in the preamble, OSHA is amending 29 CFR part 1926 as follows:

PART 1926—[AMENDED]

Subpart R—[Amended]

■ 1. The authority citation for subpart R is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order Nos. 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), and 5–2007 (72 FR 31160); and 29 CFR part 1911.

■ 2. Amend § 1926.754 by adding a note after paragraph (a) to read as follows:

§ 1926.754 Structural steel assembly.

(a) * * *

Note to paragraph (a): Federal Highway Administration (FHWA) regulations incorporate by reference a number of standards, policies, and standard specifications published by the American Association of State Highway and Transportation Officials (AASHTO) and other organizations. (*See* 23 CFR 625.4). Many of these incorporated provisions may be relevant to maintaining structural stability during the erection process. For instance, as of May 17, 2010, in many cases FHWA requires a Registered Engineer to prepare and seal working drawings for falsework used in highway bridge construction. (*See* AASHTO Specifications for Highway Bridges, Div. II, § 3.2.1, 15th edition, 1992, which FHWA incorporates by reference in 23 CFR 625.4). FHWA also encourages compliance with AASHTO Specifications that the FHWA regulations do not currently incorporate by reference. (*See http://www.fhwa.dot.gov/bridge/lrfd/index.htm.*)

* * * * *

[FR Doc. 2010–10983 Filed 5–14–10; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Correction

AGENCY: Department of the Navy, DoD.

ACTION: Correcting amendments.

SUMMARY: The Department of the Navy published a document in the **Federal Register** (69 FR 61312) of October 18, 2004, concerning certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS). The document contained an incorrect ship name and information concerning Annex I, section 2(k).

DATES: Effective May 17, 2010.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Ted Cook, JAGC, U.S. Navy, Admiralty Attorney, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374–5066, *telephone number:* 202–685–5040.

SUPPLEMENTARY INFORMATION: The Department of the Navy published a document in the **Federal Register** (69 FR 61312) of October 18, 2004, on page 61312, in Table Three concerning certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS). The document contained an incorrect ship name and information concerning Annex I, section 2(k).

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

■ Accordingly, 32 CFR Part 706 is corrected pursuant to the authority granted in 33 U.S.C. 1605 by making the following correcting amendments:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended in Table Three by revising the entry for USS VIRGINIA (SSN 774), to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) annex 1
*	*	*		*	*	*	*	
USS VIRGINIA	SSN 774 ...	.....	.....	205°	4.37	11.05	2.8	0.30 below.
*	*	*		*	*	*	*	

* * * * *

Approved: May 2, 2010.

M. Robb Hyde,

Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law)

Dated: May 5, 2010.

A.M. Vallandingham,

Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2010–11394 Filed 5–14–10; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2010–0087]

RIN 1625–AA08

Special Local Regulations for Marine Events; Patapsco River, Northwest Harbor, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations during the "Baltimore Dragon Boat Challenge", a marine event to be held on the waters of the Patapsco River, Northwest Harbor, Baltimore, MD on June 19, 2010. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Chester River during the event.

DATES: This rule is effective from June 19, 2010 to June 20, 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–2010–0087 and are available online by going to *http://www.regulations.gov,* inserting USCG–2010–0087 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 temporary rule, call or e-mail Mr. Ronald Houck, U.S. Coast Guard Sector Baltimore, MD; telephone 410–576–2674, e-mail *Ronald.L.Houck@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 1, 2010, we published a notice of proposed rulemaking (NPRM) entitled "Special Local Regulations for Marine Events; Patapsco River, Northwest Harbor, Baltimore, MD" in the **Federal Register** (75 FR 16374). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

On June 19, 2010, Baltimore Dragon Boat Club, Inc. will sponsor Dragon Boat Races in the Patapsco River, Northwest Harbor at Baltimore, MD. The event will consist of approximately 15 teams rowing Chinese Dragon Boats in heats of 2 or 3 boats for a distance of 500 meters. Due to the need for vessel control during the event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, spectators and other transiting vessels.

Discussion of Comments and Changes

The Coast Guard received no comments in response to the NPRM. No public meeting was requested and none was held.

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 regulation will prevent traffic from transiting a portion of the Patapsco River during the event, 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 the Local Notice to Mariners and marine information broadcasts, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area at slow speed between heats, when the Coast Guard Patrol Commander deems it 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 may affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the effected portions of the Patapsco River during the event.

Although this regulation prevents traffic from transiting a portion of the Patapsco River, Northwest Harbor during the event, this rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it safe to do so. Before the enforcement period, we 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 NPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (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 cause 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 that 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 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety 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, canoe and sail board racing. 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 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. Add a temporary section, § 100.35–T05–0087 to read as follows:

§ 100.35–T05–0087 Special Local Regulations for Marine Events; Patapsco River, Northwest Harbor, Baltimore, MD.

(a) *Regulated area.* The following locations are regulated areas: All waters of the Patapsco River, Northwest Harbor, in Baltimore, MD, within an area bounded by the following lines of reference; bounded on the west by a line running along longitude 076°35′35″ W; bounded on the east by a line running along longitude 076°35′10″ W; bounded on the north by a line running along latitude 39°16′40″ N; and bounded on the south by the shoreline. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) *Special local regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by the Coast Guard Patrol Commander or any Official Patrol.

(ii) Proceed as directed by the Coast Guard Patrol Commander or any Official Patrol.

(d) Enforcement period. (1) This section will be enforced from 6 a.m. until 5 p.m. on June 19, 2010, or in the case of inclement weather, from 6 a.m. to 5 p.m. on June 20, 2010.

(2) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue marine information broadcast on VHF–FM marine band radio announcing specific event date and times.

Dated: May 5, 2010.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. 2010–11516 Filed 5–14–10; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0221]

RIN 1625–AA87

Security Zone; Golden Guardian 2010 Regional Exercise; San Francisco Bay, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones on the navigable waters of the San Francisco Bay in support of Golden Guardian 2010 Regional Exercise. These temporary security zones are necessary to provide for the safety of the U.S. Navy's Marine Mammal Project participants, U.S. Coast Guard, local law enforcement, their crews, and the public during the statewide port security full scale exercise. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the temporary security zones unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 8:50 a.m. through 2:10 p.m. on May 18, 2010.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0221 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2010–0221 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 temporary rule, call or e-mail Ensign Liezl Nicholas, Waterways Management, U.S. Coast Guard Sector San Francisco, Coast Guard; telephone 415–399–7442, e-mail *D11–PF–MarineEvents@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable since the logistical details of the operations were not presented to the Coast Guard with sufficient time to draft and publish an NPRM. It is also contrary to the public interest to delay the exercise because it is in the national interest to have a trained port security military response team.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** for the same reasons indicated above.

Basis and Purpose

The California Emergency Management Agency has requested that the Coast Guard enforce temporary security zones for operations on May 18, 2010 at the Golden Guardian 2010 Regional Exercises, which is a statewide port security full scale exercise. The temporary security zones will encompass all navigable waters within 100 yards of the participating vessels. The temporary security zones are needed to protect the U.S. Navy's Marine Mammal Project participants, the U.S. Coast Guard, local law enforcement, their crews, and the public during operations from sabotage or other subversive acts, accidents, criminal actions or other causes of a similar nature.

Discussion of Rule

The Coast Guard is establishing temporary security zones that would be enforced on May 18, 2010 from 8:50 a.m. to 2:10 p.m. These security zones include all navigable waters within 100 yards of the nearest point of the vessels involved in the Golden Guardian 2010 Regional Exercises. The vessels will be located at approximately 37°47′33″ N and 122°18′00″ W; 37°49′12.30″ N and

122°18′49.23″ W; 37°46′39.37″ N and 122°23′12.64″ W (NAD 83).

Persons and vessels will be prohibited from entering into, transiting through, or anchoring within the temporary safety zones unless authorized by the Captain of the Port, or his designated representative.

The temporary security zones will be enforced by Coast Guard patrol craft and San Francisco Harbor Police as authorized by the Captain of the Port. *See* 33 CFR 6.04–11, Assistance of other agencies.

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.

It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). Due to National Security interests, the implementation of these temporary security zones are necessary for the protection of the United States and its people. The size of the zones are the minimum necessary to provide adequate protection for the U.S. Navy's Marine Mammal Project participants, the U.S. Coast Guard, local law enforcement, their crews, adjoining areas and the public. Most of the entities likely to be affected are pleasure craft engaged in recreational activities and sightseeing. Any hardships experience by persons or vessels are considered minimal compared to the national interest in protecting U.S. Navy's Marine Mammal Project participants, the U.S. Coast Guard, local law enforcement vessels, their crews, and the public. Accordingly, full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the DHS is unnecessary.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the San Francisco Bay on May 18, 2010.

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (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)(g), of the Instruction. This rule involves the establishment of security zones.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary § 165.T11–308 to read as follows:

§ 165.T11–308 Security Zone; Golden Guardian 2010 Regional Exercise; San Francisco Bay, San Francisco, CA.

(a) *Location.* All navigable waters within 100 yards of the exercise vessels while at positions: 37°47′33″ N and 122°18′00″ W; 37°49′12.30″ N and 122°18′49.23″ W; 37°46′39.37″ N and 122°23′12.64″ W (NAD 83).

(b) *Enforcement Period.* This section will be enforced from 8:50 a.m. through 2:10 p.m. on May 18, 2010. If the operation concludes prior to the scheduled termination time, the Captain of the Port San Francisco will cease enforcement of the security zones and will make the announcement via Broadcast Notice to Mariners.

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

(c) *Regulations.* (1) Entry into, transit through or anchoring within this security zone is prohibited unless authorized by the Captain of the Port San Francisco or designated representative.

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

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

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

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

Dated: May 5, 2010.

P.M. Gugg,

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

[FR Doc. 2010–11883 Filed 5–13–10; 4:15 pm]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0892; FRL–8826–3]

α-(p-Nonylphenol)-ω-hydroxypoly(oxyethylene) Sulfate and Phosphate Esters; Time-Limited Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited exemption from the requirement of a tolerance for residues of α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters and α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts when used as inert ingredients at levels not to exceed 7% in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. The Joint Inerts Task Force, Cluster Support Team Number 9 requested an exemption for the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA). The exemption from the requirement of a tolerance expires on May 17, 2012. This regulation eliminates the need to establish a maximum permissible level for residues of α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters and α-(*p*-nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts).

DATES: This regulation is effective May 17, 2010. Objections and requests for hearings must be received on or before July 16, 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–2008–0892. 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: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; e-mail address: *leifer.kerry@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*. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/oppts* and select "Test Methods and Guidelines."

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–2008–0892 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 16, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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–2008–0892, 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

In the **Federal Register** of March 25, 2009 (74 FR 12856) (FRL– 8399–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7478) by the Joint Inerts Task Force, Cluster Support Team 9, c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.910 and 40 CFR 180.930 be amended by establishing exemptions from the requirement of a tolerance for residues of of α-(p-nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters ; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4-14 or 30 moles for CAS Reg. Nos. 51811-79-1, 59139-23-0, 67922-57-0, 68412-53-3, 68553-97-9, 68954-84-7, 99821-14-4, 152143-22-1, 51609-41-7, 37340-60-6, 106151-63-7, 68584-47-4, 52503-15-8, 68458-49-1 and α-(p-nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts the nonyl group is propylene trimer isomer and the poly(oxyethylene) content averages 4 moles for CAS Reg Nos. 9014-90-8, 9051-57-4, 9081-17-8, 68649-55-8, 68891-33-8 (herein referred to in this document as nonylphenol ethoxylate phosphate and sulfate derivatives or NPEPSDs) when used as inert ingredients in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. That notice referenced a summary of the petition prepared by the Joint Inerts Task Force, Cluster Support Team 9, the petitioner, which is available to the public in the docket, http://www.regulations.gov. There were no comments received in response to the notice of filing. These tolerances expire on May 17, 2012.

Based upon review of the data supporting the petition, EPA has determined that the 40 CFR 180.910 and 40 CFR 180.930 exemptions from the requirement of a tolerance for NPEPSDs should be time-limited for a period of two years and include a use limitation of not to exceed 7% by weight of the pesticide formulation. This limitation is discussed further in Units IV.C. and V.C. and is based on the Agency's risk assessment which can be found at http://www.regulations.gov in the document "Nonylphenol Ethoxylates

and Their Phosphate and Sulfate Derivatives (NPEs - JITF CST 9 Inert Ingredients). Revised Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations" in docket ID number EPA–HQ–OPP–2008–0892. This petition was submitted in response to a final rule that was published in the **Federal Register** of August 9, 2006 (71 FR 45415) (FRL–8084–1) in which the Agency revoked, under section 408(e)(1) of FFDCA, the existing exemptions from the requirement of a tolerance for residues of certain inert ingredients because of insufficient data to make the determination of safety required by section 408(b)(2) of FFDCA. The expiration date for the tolerance exemptions subject to revocation was August 9, 2008, which was later extended to August 9, 2009, in the **Federal Register** of August 4, 2008 (73 FR 45317) (FRL– 8373–6) to allow for data to be submitted to support the establishment of tolerance exemptions for those inert ingredients prior to the effective date of the tolerance exemption revocation. The effective date of the revocation for α-(p-nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters and α-(p-nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts was subsequently extended on August 7, 2009 (74 FR 39543) (FRL–8431–8), October 9, 2009 (74 FR 52148) (FRL–8794–1), and February 9, 2010 (75 FR 6314) (FRL–8812–3). The current effective date of the revocation is May 9, 2010.

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 andhydrocarbons; 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. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for NPEPDs including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with NPEPDs follows.

A. Toxicological Profile

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

NPEPSDs have low to moderate acute oral and dermal toxicity, are mild to moderate skin irritants, and eye irritants. Based on the analysis of the studies in the open literature, there is both positive and negative evidence that NPEPSDs are mutagenic in bacteria (Salmonella typhimurium). In Harmonized Guideline 870.3650 combined repeated dose toxicity studies with the reproduction/developmental toxicity screening test in rats with NPEPSDs, there was no evidence of increased susceptibility. Additionally, there was no evidence of neurotoxicity, developmental toxicity, or reproductive toxicity in those same studies. The Agency has identified nonylphenol as a potential metabolite/degradate of concern. The Agency considered available toxicity data on nonylphenol as well as toxicity data on the structurally related octylphenol when assessing the hazard for this potential metabolite/ degradate. The major effects seen in the octylphenol/nonylphenol databases are consistent with potential disturbances in estrogenic activity, but a complete mode of action analysis has not been conducted. These effects are the most sensitive endpoints for both substances and were considered the key findings for regulatory purposes. The Agency has used available data on the nonylphenol and octylphenol, which specifically look at these effects, to establish toxicity endpoints for both NPEPSDs and degradates of concern. The Agency considers the toxicity database to be sufficient to address potential hazards, and the Agency is regulating on the most sensitive endpoints seen in the database; effects which are well characterized with clear no-observed-adverse-effect levels (NOAEL).

Specific information on the studies received and the nature of the toxic effects caused by NPEPSDs as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at http://www.regulations.gov in document "Nonylphenol Ethoxylates and Their Phosphate and Sulfate Derivatives (NPEs — JITF CST 9 Inert Ingredients). Revised Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations," pp. 11–22 in docket ID number EPA–HQ–OPP–2008–0892.

B. Toxicological Points of Departure/ Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are

observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level – generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) – and a safe margin of exposure (MOE) or level of concern (LOC). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for NPEPSDs used for human risk assessment is shown in the Table of this unit.

TABLE — SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR NPEPSDS AND ITS METABOLITES (INCLUDING NONYLPHENOL) FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13–50 years of age)	NOAEL = 15.6 milligrams/kilograms/day (mg/kg/day) UF_A = 10x UF_H = 10x Food Quality Protection Act Safety Factor (FQPA SF) = 1x	Acute RfD = 0.156 mg/kg/day aPAD = 0.156 mg/kg/day	Initiation and maintenance of pregnancy in rats (octylphenol) LOAEL = 31.3 mg/kg/day based on increased % post-implantation loss following exposure of dams during gestation days 0–8.
Acute dietary (General population including infants and children)	An endpoint attributable to a single exposure was not seen in the database; therefore a point of departure was not selected.		
Chronic dietary (All populations)	NOAEL= 10 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.1 mg/kg/day cPAD = 0.1 mg/kg/day	2–Generation reproduction study in rats (octylphenol) LOAEL = 50 mg/kg/day based on significant increases in pituitary weight (↑12%, males), decreases in ovary weight (↓18%) in F_0 animals; timing of vaginal opening significantly accelerated in F_1 females; decreases in the numbers of implants and live F_2 pups born 3–Generation reproduction study in rats (nonylphenol) LOAEL=30 mg/kg/day based on acceleration of vaginal opening by by ≈2 days and ≈6 days in F_1, F_2, and F_3 generations following dietary exposure at 30 and 100 mg/kg/day respectively (NOAEL ≈9 mg/kg/day)
Incidental oral and inhalation (short-term (1 to 30 days) and intermediate-term (1 to 6 months)	NOAEL= 150 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 10x	Residential LOC for MOE = 1,000. Occupational LOC for MOE = 100	Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats (NPEPSD) LOAEL = 300 mg/kg/day based on clinical signs (pushing head through bedding after dosing), decreased body-weight gain in both sexes during the premating period, decreased thymus weight in females, increased liver weight in males, and increased incidence of centrilobular hepatocyte hypertrophy in males.

TABLE — SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR NPEPSDS AND ITS METABOLITES (INCLUDING NONYLPHENOL) FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure/Scenario	Point of Departure and Uncertainty/ Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Dermal short-term (1 to 30 days) and intermediate-term (1 to 6 months)	Oral study NOAEL = 150 mg/kg/day (dermal absorption rate = 1%Dermal equivalent dose = 10,000 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 10x = UF_{DB}	Residential LOC for MOE = 1,000 Occupational LOC for MOE = 100	Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats (NPEPSD) LOAEL = 300 mg/kg/day based on clinical signs (pushing head through bedding after dosing), decreased body-weight gain in both sexes during the premating period, decreased thymus weight in females, increased liver weight in males, and increased incidence of centrilobular hepatocyte hypertrophy in males
Cancer (Oral, dermal, inhalation)	Classification: Not classified; no alerts identified in structure-activity database (DEREK Version 11) with respect to carcinogenicity; potential mutagenicity concern identified in open literature for NPEPSDs and metabolite. Based on a weight consideration of the available data, the Agency believes that cancer risks would be negligible.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_L = use of a LOAEL to extrapolate a NOAEL. UF_S = use of a short-term study for long-term assessment. UF_{DB} = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

C. Exposure Assessment

Very limited information is available for NPEPSDs with respect to plant and animal metabolism/degradation. There is extensive information in the literature on environmental degradation, and some information on bacterial and mammalian metabolism, all of which indicate similar degradation of the NPEPSD compounds. The ethoxylate moiety is degraded by sequential removal of the ethoxylate groups, eventually degrading to nonylphenol. There are studies in the literature that suggest that plants have the ability to take up nonylphenol ethoxylate residues from treated soil. While the Agency does not expect that the use of NPEPSDs as inert ingredients in pesticide formulations would result solely in exposure to octylphenol, there are no available data on the exact nature of octylphenol ethoxylate residues in food and drinking water resulting from the use of NPEPSDs as inert ingredients. Therefore, the Agency has concluded that the residues of concern in food and drinking water are the NPEPSD compounds, their partially de-ethoxylated degradation products, as well as the degradation product nonylphenol, and has conservatively assumed that in the case of food and drinking water exposures all exposure will be in the form of exposure to nonylphenol, the potential metabolite/degradate of greatest toxicological concern.

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to NPEPSDs, EPA considered exposure from the petitioned-for exemption from the requirement of a tolerance. EPA assessed dietary exposures from NPEPSDs in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. Such effects were identified for NPEPSDs. A hazard endpoint for acute exposure to NPEPSDs was identified only for females ages 13–49; no hazard endpoints for acute exposure were identified for any other population group. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, in the absence of specific residue data, both the acute and chronic dietary exposure assessments are conducted using surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data can be found at *http://www.regulations.gov* in the document Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts." in docket ID number EPA–HQ–OPP–2008–0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations of active ingredient in agricultural products are generally at least 50 percent of the product and often can be much higher. Further, pesticide

products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product relative to that of the active ingredient. EPA made a specific adjustment to the dietary exposure assessment to account for the use limitations of the amount of the surfactant NPEPSD that may be in formulations (no more than 7%) and assumed that NPEPSDs are at the maximum limitation rather than at equal quantities with the active ingredient. This remains a very conservative assumption because surfactants are generally used at levels far below these percentages. For example, EPA examined several of the pesticide products associated with the tolerance/commodity combination which are the driver of the risk assessment and found that these products did not contain surfactants at levels greater than 2.25% and that none of the surfactants were NPEPSDs.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert ingredient residue could be on food, and then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure to NPEPSDs in the absence of residue data.

iii. *Cancer*. The Agency used a qualitative structure activity relationship (SAR) database, DEREK11, to determine if there were structural alerts suggestive of carcinogenicity. No structural alerts for carcinogenicity were identified. Based on a weight of the evidence consideration of the available data, the Agency believes that cancer risks would be negligible for NPEPSDs. Therefore, a cancer dietary exposure assessment is not necessary to assess cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information*. EPA did not use anticipated residue and/or PCT information in the dietary assessment for octylphenol ethoxylate. Tolerance level residues and/or 100% CT were assumed for all food commodities.

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

A screening level drinking water analysis, based on the Pesticide Root Zone Model /Exposure Analysis Modeling System (PRZM/EXAMS) was performed to calculate the estimated drinking water concentrations (EDWCs) of octylphenol ethoxylate. Modeling runs on four surrogate inert ingredients using a range of physical chemical properties that would bracket those of octylphenol ethoxylate were conducted. Modeled acute drinking water values ranged from 0.001 ppb to 41 ppb. Modeled chronic drinking water values ranged from 0.0002 ppb to 19 ppb. Further details of this drinking water analysis can be found at http://www.regulations.gov in the document "Nonylphenol Ethoxylates and Their Phosphate and Sulfate Derivatives (NPEs — JITF CST 9 Inert Ingredients). Revised Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations." at pp. 23–25 and Appendix C in docket ID number EPA–HQ–OPP–2008–0892.

For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for octylphenol ethoxylate, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for acute and chronic dietary risk assessments for the parent compounds and for the metabolites of concern. These values, which are 10 to 1000 times greater than the highest levels of these substance seen in numerous surface and ground water monitoring studies, were directly entered into the acute and chronic dietary exposure models.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). NPEPSDs may be used as inert ingredients in pesticide products that are registered for specific uses that may result in residential exposures. A screening level residential exposure and risk assessment was completed for pesticide products containing NPEPSDs as inert ingredients. In this assessment, representative scenarios, based on end-use product application methods and labeled application rates, were selected. For each of the use scenarios, the Agency assessed residential handler (applicator) inhalation and dermal exposure for use scenarios with high exposure potential (i.e., exposure scenarios with high-end unit exposure values) to serve as a screening assessment for all potential residential pesticides containing NPEPSDs. Similarly, residential postapplication dermal and oral exposure assessments were also performed utilizing high-end exposure scenarios. In the case of NPEPSDs, non-dietary exposures are to NPEPSDs only as there is no appreciable metabolism or degradation of NPEPSDs in any of the representative residential use scenarios. Further details of this residential exposure and risk analysis can be found at http://www.regulations.gov in the document "JITF Inert Ingredients. Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations" in docket ID number EPA–HQ–OPP–2008–0710.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf*.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. In the case of NPEPSDs, there was no increased susceptibility to the offspring of rats following pre-natal and post-natal exposure in either Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening test. In the Harmonized Guideline 870.3650 study with the nonylphenol ethoxylate phosphate ester, decrease in pup viability was observed at the limit dose, whereas parental toxicity was observed at a lower dose, as evidenced by the decrease in body-weight gain and food consumption during premating and signs of discomfort (pushing head through bedding) at 300 mg/kg/day. In the Harmonized Guideline 870.3650 study on the nonylphenol ethoxylate sulfate, decreased pup viability (decreased number of live pups/litter at birth, increased number of dead pups and litters with dead pups), and decreased pup body weight/body-weight gain were observed at the limit dose where parental toxicity manifested as mortality, clinical signs (soft feces, signs of discomfort), decreased body weight gain, liver toxicity, and lesions in the forestomach (both sexes) and decreased body temperature and locomotor activity, hematologic effects, and kidney lesions in females. Since the Harmonized Guideline 870.3650 studies with NPEPSDs did not assess their impact on the estrogen system, they cannot be used alone to properly assess the most sensitive endpoint. However, selecting the POD from the Harmonized Guideline 870.3650 study on nonylphenol ethoxylate phosphate which is based on a NOAEL of 100 mg/kg/day and decreased body-weight gain in both sexes during the premating period at the LOAEL of 300 mg/kg/day, and retaining the FQPA SF of 10X is comparable to using the POD from the reproduction studies on the most toxicologically potent compound (nonylphenol) that assessed estrogenic activity (endpoint: accelerated vaginal opening; POD: 10 mg/kg/day). The endpoint (accelerated vaginal opening) and point of departure (10 mg/kg/day) are considered health protective of effects not assessed in the Harmonized Guideline 870.3650 studies on the NPEPSDs For the nonylphenol metabolite, two of the multigeneration reproduction studies in rats and two studies in prepubertal female rats showed accereration in the acquisition of vaginal patency. A delay in preputial separation was observed in male rats in a pubertal onset assay.

Although no developmental toxicity studies were identified in the toxicology database for nonylphenol,a developmental toxicity study was identified in the octylphenol database, and a clear NOAEL of 15.6 mg/kg/day (post-implantation loss) was established. The POD for nonylphenol was selected from this study for the acute dietary (females 13+) exposure. This study is considered appropriate and health protective in light of the fact that octylphenol and nonylphenol differ by only one methylene unit.

3. *Conclusion*. EPA has determined that the FQPA safety factor can be reduced to 1X for the nonylphenol metabolite upon which the dietary assessment is based. This decision is based on the following findings:

i. The most sensitive endpoint from the most toxicologically potent compound (nonylphenol) was selected for risk assessment and is considered health protective. There are several studies on nonylphenol (two multigeneration reproduction studies, pubertal onset assays, uterotrophic assays), which demonstrate acceleration of vaginal opening in the rat. Accelerated vaginal opening is the most consistent and sensitive endpoint identified. Clear NOAELs for this endpoint have been identified following exposure to nonylphenol.

ii. Although no developmental toxicity studies were identified in the open literature for nonylphenol, a developmental study on the structurally-related substance, octylphenol, demonstrated an increase in post-implantation loss following exposure to the dams from gestation day 0–8. A clear NOAEL of 15.6 mg/kg/day was established for the offspring effects. Since the POD selected from that study for acute dietary exposure to the octylphenol metabolite is 15.6 mg/kg/day, this value is considered health protective of offspring effects that might be found following nonylphenol exposure.

iii. There are several multigeneration reproduction studies in rats on nonylphenol that demonstrates no adverse effects on reproductive function.

iv. Although the available mammalian toxicity database does not include any chronic toxicity data, there are several multigeneration reproduction studies on the most toxicologically potent compound in the risk assessment, nonylphenol, in which test animals were dosed for extended periods of time and across generations.

v. No evidence of neurotoxicity was demonstrated in the database for NPEPSDs, octylphenol, or nonylphenol and thus there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

vi. The exposure assessments used in this risk assessment are considered to be highly conservative. In the absence of substantial information on environmental degradation, the Agency has conducted an assessment which assumes that 100% of NPEPSDs is degradated to the more toxic degradate, nonylphenol. Further, the assessment assumed residues of nonylphenol will be present in all foods consumed at levels consistent with the highest established pesticide tolerance, and in drinking water at a high-end estimated level of 100 ppb. The Agency anticipates that this assessment will significantly overestimate risk.

EPA has determined that the FQPA safety factor should be retained (10X)

for NPEPSDs, the compound upon which the residential assessment is based. This decision is based on the following findings: (a) Although endpoints from the Harmonized Guideline 870.3650 study in rats following pre- endpost-natal exposure to NPEPSDs were selected for the residential and occupational risk assessments, there are concerns that the study did not look for the most sensitive endpoints for the estrogen system; and (b) the Agency does note that no increased susceptibility was demonstrated in the offspring in the Harmonized Guideline 870.3650 study in rats following pre- and post-natal exposure to NPEPSDs.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, including the limitation of use of NPEPSDs to not more than 7% of the pesticide product, the acute dietary exposure from food and water to NPEPSDs willl occupy 37% of the aPAD for females 13 to 49 years old, the only population group for which an acute toxicity endpoint was established.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, including the limitation of use of NPEPSDs to not more than 7% of the pesticide product, EPA has concluded that chronic exposure to NPEPSDs from food and water will utilize 90% of the cPAD for children 1–2 years old the population group receiving the greatest exposure. Based on the explanation in Unit IV.C.3., regarding residential use patterns, chronic residential exposure to residues of octylphenol is not expected.

3. *Short-term and intermediate-term risk.* Short-term and intermediate-term aggregate exposure takes into account short-term and intermediate term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short-term and intermediate-term aggregate risk assessments for NPEPSDs combine high end residential short- or intermediate-term exposures with average food and drinking water exposures, and compare this total to a short- or intermediate-term PoD.

The point of departure for the dietary risk assessment is 10 mg/kg/day and the the Level of Concern (LOC) when examining the margin of exposure is 100 for NPEPSDs. The point of departure for the residential risk assessment is 150 mg/kg/day and the LOC is 1000 for NPEPSDs. For the purpose of aggregating risks from dietary and residential exposure, the Agency is using the Aggregate Risk Index approach for aggregate risk assessment. This approach allows for combining exposures which must be compared to different NOAELs and different LOCs. Potential risks of concerns are identified by an ARI of less than 1. Short- and intermediate-term aggregate risks for NPEPSDs are not of concern (values ranging from 1.0 to 4.3 for children and adults, respectively).

4. The Agency has carefully considered the weight of the evidence with respect to carcinogenicity for both NPEPSDs and for nonylphenol. There were no structral alerts for carcinogenicity amd there were equivocal mutagenicity findings in the literature studies. Based on a weight of the evidence consideration of the available data, the Agency believes that cancer risks would be negligible. However, due to the equivocal findings in the mutagenicity data base, the Agency is asking for confirmatory data.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to octylphenol ethoxylate residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of octylphenol ethoxylate in or on any food commodities. EPA is establishing a limitation on the amount of octylphenol ethoxylate that may be used in pesticide formulations applied to growing crops and raw agricultural commodities. That limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. 136 et seq. EPA will not register any such pesticide for sale or distribution that contains greater than 7% of octylphenol ethoxylate by weight in the pesticide formulation.

B. International Residue Limits

The Agency is not aware of any country requiring a tolerance for octylphenol ethoxylate nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

C. Revisions to Petitioned-For Exemption from the Requirement of a Tolerance

EPA is revising the petitioned-for octylphenol ethoxylate exemption from the requirement of a tolerance under 40 CFR 180.910 by including a limitation of "not to exceed 7% of the pesticide formulation." As discussed in Unit IV.C., this limitation will ensure that there are no aggregate risks of concern.

Additionally, EPA is also revising the octylphenol ethoxylate exemption from the requirement of a tolerance under 40 CFR 180.910 to include a two-year time limitation. The exemption from the requirement of a tolerance for NPEPSDs will expire on May 17, 2012. This two-year time limitation is being established for two purposes: (1) To provide time for the development and submission of confirmatory toxicity data to address the equivocal results in the available genotoxicity studies conducted on NPEPSDs; and (2) to provide additional time, should the initial testing not confirm EPA's conclusion regarding the lack of a cancer concern, for registrants to attain EPA approval of registration amendments for reformulation of their pesticide products to remove NPEPSDs and to replace existing products with reformulated products.

EPA believes that its cancer conclusion can be confirmed by negative results in either *in vitro* or *in vivo* mutagenicity studies. EPA is recommending that supporters of the NPEPSDs tolerance exemption perform the following studies for confirmatory purposes:

A new Ames assay (Harmonized Test Guideline 870.5100 – Bacterial reverse mutation test) and a mouse lymphoma assay (Harmonized Guideline 870.5300 – *In vitro* mammalian cell gene mutation test). A bone marrow assay (Harmonized Guideline 870.5395 – Mammalian erythrocyte micronucleus test).

Since *in vivo* mutagenicity studies such as the bone marrow assay are generally regarded as more definitive than *in vitro* studies, and a negative result in the bone marrow test may outweigh whatever results are found in the Ames test and mouse lymphoma assay, supporters of the NPEPSDs tolerance exemption may opt to conduct the mammalian erythrocyte micronucleus test in lieu of the two *in*

vitro mutagenicity studies. If these data do not confirm EPA's cancer conclusion, then EPA will need two-year cancer bioassays in the mouse and rat (Harmonized Guideline 870.4200 – Carcinogenicity (mouse) and Harmonized Guideline 870.4300 – combined Chronic Toxicity/ Carcinogenicity (rat)) to make a safety finding in support of this tolerance exemption.

In conducting confirmatory testing, supporters of the NPEPSD tolerance exemption should keep the following information in mind. EPA believes that the minimum time period for registrants to obtain approval of reformulated products and to replace existing products is 15 months. Thus, EPA plans to alert the registrant community no later than February 17, 2011 whether confirmatory data has been received and demonstrates that EPA's cancer conclusion was correct. if submitted data do confirm epa's conclusion, EPA will notify registrants that it intends to remove the expiration date from the tolerance exemption prior to expiration of the exemption. if the submitted data do not confirm the conclusion, EPA will inform registrants that they should assume that the tolerance exemption will expire on May 17, 2012 and that they should take all appropriate steps to insure that they do not release for shipment product that may result in food containing residues inconsistent with the dictates of the FFDCA. EPA does not intend to extend the expiration date for the exemption if it is determined that two-year cancer bioassays are needed to evaluate potential cancer risk. additionally, if no confirmatory data are submitted by November 17, 2010, EPA will not have time to make a decision on any confirmatory data by February 17, 2011 and thus, at that time, EPA will inform registrants that they should assume that the tolerance exemption will expire on May 17, 2012 and that they should take all appropriate steps as indicated in this Unit.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance for residues of α-(p-nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4-14 or 30 moles and α-(p-nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts the nonyl group is propylene trimer isomer and the poly(oxyethylene) content averages 4 moles when used as inert ingredients at levels not to exceed 7% in pesticide formulations applied to growing crops and raw agricultural commodities after harvest under 40 CFR 180.910 and to applied to animals under 40 CFR 180.930 is established with an expiration date of May 17, 2012.

VII. Statutory and Executive Order Reviews

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

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

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

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

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 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: May 10, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.910 is amended by adding alphabetically the following entries in the table of inert ingredients to read as follows:

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

* * * * *

Inert Ingredients	Limits	Uses
*	* * * *	
α-(p-nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4-14 or 30 moles (CAS Reg. Nos. 51811-79-1, 59139-23-0, 67922-57-0, 68412-53-3, 68553-97-9, 68954-84-7, 99821-14-4, 152143-22-1, 51609-41-7, 37340-60-6, 106151-63-7, 68584-47-4, 52503-15-8, 68458-49-1).	Not to exceed 7% of pesticide formulation. Expires May 17, 2012.	Surfactants, related adjuvants of surfactants
*	* * * *	
α-(p-nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts the nonyl group is propylene trimer isomer and the poly(oxyethylene) content averages 4 moles (CAS Reg Nos. 9014-90-8, 9051-57-4, 9081-17-8, 68649-55-8, 68891-33-8).	Not to exceed 7% of pesticide formulation. Expires May 17, 2012.	Surfactants, related adjuvants of surfactants
*	* * * *	

* * * * *

■ 3. Section 180.930 is amended by adding alphabetically the following entries in the table of inert ingredients to read as follows:

§180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.

* * * * *

Inert Ingredients	Limits	Uses
*	* * * *	
α-(p-nonylphenol)-ω-hydroxypoly(oxyethylene) mixture of dihydrogen phosphate and monohydrogen phosphate esters and the corresponding ammonium, calcium, magnesium, potassium, sodium, and zinc salts of the phosphate esters; the nonyl group is a propylene trimer isomer and the poly(oxyethylene) content averages 4-14 or 30 moles (CAS Reg. Nos. 51811-79-1, 59139-23-0, 67922-57-0, 68412-53-3, 68553-97-9, 68954-84-7, 99821-14-4, 152143-22-1, 51609-41-7, 37340-60-6, 106151-63-7, 68584-47-4, 52503-15-8, 68458-49-1).	Not to exceed 7% of pesticide formulation. Expires May 17, 2012.	Surfactants, related adjuvants of surfactants
*	* * * *	
α-(p-nonylphenol)-ω-hydroxypoly(oxyethylene) sulfate, ammonium, calcium, magnesium, potassium, sodium, and zinc salts the nonyl group is propylene trimer isomer and the poly(oxyethylene) content averages 4 moles (CAS Reg Nos. 9014-90-8, 9051-57-4, 9081-17-8, 68649-55-8, 68891-33-8).	Not to exceed 7% of pesticide formulation. Expires May 17, 2012.	Surfactants, related adjuvants of surfactants

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[FR Doc. 2010–11687 Filed 5–14–10; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0890; FRL–8824–3]

α-[p-(1,1,3,3-Tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene); Time-Limited Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited exemption from the requirement of a tolerance for residues of α-[*p*-(1,1,3,3-tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) when used as an inert ingredient at levels not to exceed 7% in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. The Joint Inerts Task Force, Cluster Support Team Number 5 requested an exemption for the requirement of a tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA). The exemption from the requirement of a tolerance expires on May 17, 2012. This regulation eliminates the need to establish a maximum permissible level for residues of α-[*p*-(1,1,3,3-tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene).

DATES: This regulation is effective May 17, 2010. Objections and requests for hearings must be received on or before July 16, 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–2008–0890. 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: Kerry Leifer, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8811; e-mail address: *leifer.kerry@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*. To access the harmonized test guidelines referenced in this document electronically, please go to *http://www.epa.gov/ocspp* and select "Test Methods and Guidelines."

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–2008–0890 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before July 16, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

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–2008–0890, 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

In the **Federal Register** of March 25, 2009 (74 FR 12856) (FRL–8399–4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7466) by the Joint Inerts Task Force, Cluster Support Team 5, c/o CropLife America, 1156 15th Street, NW., Suite 400, Washington, DC 20005. The petition requested that 40 CFR 180.910 be amended by establishing an exemption from the requirement of a tolerance for residues of α-[*p*-(1,1,3,3-tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p*-(1,1,3,3-tetramethylbutyl)phenol with a range of 1–14 or 30–70 moles of ethylene oxide: if a blend of products is used, the average range number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 1–14 or 30–70 (herein referred to in this document as octylphenol ethoxylate or OPE) when used as an inert ingredient in pesticide formulations applied to growing crops and raw agricultural commodities after harvest. That notice referenced a summary of the petition prepared by the Joint Inerts Task Force, Cluster Support Teams 5, the petitioner, which is available to the public in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing. These tolerances expire on May 17, 2012.

Based upon review of the data supporting the petition, EPA has determined that the 40 CFR 180.910 exemption from the requirement of a tolerance for octylphenol ethoxylate should be time-limited for a period of two years and include a use limitation of not to exceed 7% by weight of the pesticide formulation. This limitation is discussed further in Units IV.C. and V.C. and is based on the Agency's risk assessment which can be found at *http://www.regulations.gov* in the document "Alkylphenol Ethoxylates (APEs - JITF CST 5 Inert Ingredients). Revised Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations" in docket ID number EPA–HQ–OPP–2008–0890.

This petition was submitted in response to a final rule that was published in the **Federal Register** of August 9, 2006 (71 FR 45415) (FRL–8084–1) in which the Agency revoked, under section 408(e)(1) of FFDCA, the existing exemptions from the requirement of a tolerance for residues of certain inert ingredients because of insufficient data to make the determination of safety required by section 408(b)(2) of FFDCA. The expiration date for the tolerance exemptions subject to revocation was August 9, 2008, which was later extended to August 9, 2009, in the **Federal Register** of August 4, 2008 (73

FR 45317) (FRL–8373–6) to allow for data to be submitted to support the establishment of tolerance exemptions for those inert ingredients prior to the effective date of the tolerance exemption revocation. The effective date of the revocation for α-[*p*-(1,1,3,3-tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) was subsequently extended on August 7, 2009 (74 FR 39543) (FRL–8431–8), October 9, 2009 (74 FR 52148) (FRL–8794–1), and February 9, 2010 (75 FR 6314) (FRL–8812–3). The current effective date of the revocation is May 9, 2010.

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. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for octylphenol ethoxylate including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with octkylphenol ethoxylate follows.

A. Toxicological Profile

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

Octylphenol ethoxylate has low to moderate acute oral and dermal toxicity, is a mild to moderate skin irritant, and an eye irritant. Based on the analysis of the studies in the open literature, there is both positive and negative evidence that octylphenol ethoxylate is mutagenic in bacteria (*Salmonella typhimurium*) and mammalian (Chinese hamster ovary, mouse lymphoma) cells. In the Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats with octylphenol ethoxylate, there was no evidence of increased susceptibility. Additionally, there was no evidence of neurotoxicity, developmental toxicity, or reproductive toxicity in that same study. The Agency has identified octylphenol as a potential metabolite/degradate of concern. The Agency considered available toxicity data on octylphenol as well as toxicity data on the structurally related nonylphenol when assessing the hazard for this potential metabolite/degradate. The major effects seen in the octylphenol/nonylphenol databases are consistent with potential disturbances in estrogenic activity, but a complete mode of action analysis has not been conducted. These effects are the most sensitive endpoints for both substances and were considered the key findings for regulatory purposes. The Agency has used available data on the nonylphenol and octylphenol, which specifically look at these effects, to establish toxicity endpoints for both octylphenol ethoxylate and degradates of concern. The Agency considers the toxicity database to be sufficient to address potential hazards, and the Agency is regulating on the most sensitive endpoints seen in the database; effects which are well characterized with clear no-observed-adverse-effect levels (NOAEL).

Specific information on the studies received and the nature of the toxic effects caused by octylphenol ethoxylate as well as the NOAEL and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in document "Alkylphenol Ethoxylates (APEs - JITF CST 5 Inert Ingredients). Revised Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations," pp. 9–20 in docket ID number EPA–HQ–OPP–2008–0890.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern (LOC) to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors (UF/SF) are used in conjunction with the POD to calculate a safe exposure level – generally referred to as a population-adjusted dose (PAD (a = acute, c = chronic)) or a reference dose (RfD), and a safe margin of exposure (MOE) or level of concern. For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm*.

A summary of the toxicological endpoints for octylphenol ethoxylate used for human risk assessment is shown in the Table of this unit.

TABLE — SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR OCTYLPHENOL ETHOXYLATES AND ITS METABOLITES (INCLUDING OCTYLPHENOL) FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/ Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13–50 years of age)	NOAEL = 15.6 milligrams/kilograms/day (mg/kg/day) UF_A = 10x UF_H = 10x Food Quality Protection Act Safety Factor (FQPA SF) = 1x	Acute RfD = 0.156 mg/kg/day aPAD = 0.156 mg/kg/day	Initiation and maintenance of pregnancy in rats (octylphenol) LOAEL = 31.3 mg/kg/day based on on increased % post-implantation loss following exposure of dams during gestation days 0–8.
Acute dietary (General population including infants and children)	An endpoint attributable to a single exposure was not seen in the database; therefore a point of departure was not selected.		
Chronic dietary (All populations)	NOAEL= 10 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.1 mg/kg/day cPAD = 0.1 mg/kg/day	2–Generation reproduction study in rats (octylphenol) LOAEL = 50 mg/kg/day based on significant increases in pituitary weight (↑12%, males), decreases in ovary weight (↓18%) in F_0 animals; timing of vaginal opening significantly accelerated in F_1 females; decreases in the numbers of implants and live F_2 pups born
Incidental oral and inhalation (short-term (1 to 30 days) and intermediate-term (1 to 6 months)	NOAEL= 150 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 10x	Residential LOC for MOE = 1,000. Occupational LOC for MOE = 100	Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats (octylphenol ethoxylate) LOAEL = 300 mg/kg/day based on clinical signs (pushing head through bedding after dosing), decreased body-weight gain in both sexes during the premating period, decreased thymus weight in females, increased liver weight in males, and increased incidence of centrilobular hepatocyte hypertrophy in males.
Dermal short-term (1 to 30 days) and intermediate-term (1 to 6 months)	Oral study NOAEL = 150 mg/kg/day (dermal absorption rate = 1%Dermal equivalent dose = 10,000 mg/kg/day UF_A = 10x UF_H = 10x FQPA SF = 10x = UF_{DB}	Residential LOC for MOE = 1,000 Occupational LOC for MOE = 100	Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening test in rats (octylphenol ethoxylate) LOAEL = 300 mg/kg/day based on clinical signs (pushing head through bedding after dosing), decreased body-weight gain in both sexes during the premating period, decreased thymus weight in females, increased liver weight in males, and increased incidence of centrilobular hepatocyte hypertrophy in males
Cancer (Oral, dermal, inhalation)	Classification: Not classified; no alerts identified in structure-activity database (DEREK Version 11) with respect to carcinogenicity; potential mutagenicity concern identified in open literature for octylphenol ethoxylate and metabolite. Based on a weight of the evidence consideration of the available data, the Agency believes that cancer risks would be negligible.		

UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies). UF_{DB} = to account for the absence of data or other data deficiency.

C. Exposure Assessment

Very limited information is available for octylphenol ethoxylate with respect to plant and animal metabolism/degradation. There is extensive information in the literature on environmental degradation, and some information on bacterial and mammalian metabolism, all of which indicate similar degradation of the octylphenol ethoxylate compounds. The ethoxylate moiety is degraded by sequential removal of the ethoxylate groups, eventually degrading to octylphenol. There are studies in the literature that suggest that plants have the ability to take up octylphenol ethoxylate residues from treated soil.

While the Agency does not expect that the use of octylphenol ethoxylate as an inert ingredient in pesticide formulations would result solely in exposure to octylphenol, there are no available data on the exact nature of octylphenol ethoxylate residues in food and drinking water resulting from the use of octylphenol ethoxylate as an inert ingredient. Therefore, the Agency has concluded that the residues of concern in food and drinking water are the octylphenol ethoxylate compounds, their partially de-ethoxylated degradation products, as well as the degradation product octylphenol, and has conservatively assumed that in the case of food and drinking water exposures all exposure will be in the form of exposure to octylphenol, the potential metabolite/degradate of greatest toxicological concern.

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to octylphenol ethoxylate, EPA considered exposure from the petitioned-for exemption from the requirement of a tolerance. EPA assessed dietary exposures from octylphenol ethoxylate in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. Such effects were identified for octylphenol ethoxylate. A hazard endpoint for acute exposure to octylphenol ethoxylate was identified only for females ages 13–49; no hazard endpoints for acute exposure were identified for any other population group. In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII).

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII.

As to residue levels in food, in the absence of specific residue data, both the acute and chronic dietary exposure assessments are conducted using surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data can be found at *http://www.regulations.gov* in the document "Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts" in docket ID number EPA–HQ–OPP–2008–0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations of active ingredient in agricultural products are generally at least 50% of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product relative to that of the active ingredient. EPA made a specific adjustment to the dietary exposure assessment to account for the use limitations of the amount of the surfactant octylphenol ethoxylate that may be in formulations (no more than 7%) and assumed that octylphenol ethoxylate is at the maximum limitation rather than at equal quantities with the active ingredient. This remains a very conservative assumption because surfactants are generally used at levels far below these percentages. For example, EPA examined several of the pesticide products associated with the tolerance/commodity combination which are the driver of the risk assessment and found that these products did not contain surfactants at levels greater than 2.25% and that none of the surfactants was octylphenol ethoxylate.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100% of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert ingredient residue could be on food, and then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

iii. *Cancer.* The Agency used a qualitative structure activity relationship (SAR) database, DEREK11, to determine if there were structural alerts suggestive of carcinogenicity. No structural alerts for carcinogenicity were identified. Based on a weight of the evidence consideration of the available data, the Agency believes that cancer risks would be negligible. Therefore, a cancer dietary exposure assessment is not necessary to assess cancer risk.

iv. *Anticipated residue and percent crop treated (PCT) information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for octylphenol ethoxylate. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for octylphenol ethoxylate. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of octylphenol ethoxylate. Further information

regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

A screening level drinking water analysis, based on the Pesticide Root Zone Model / Exposure Analysis Modeling System (PRZM/EXAMS) was performed to calculate the estimated drinking water concentrations (EDWCs) of octylphenol ethoxylate. Modeling runs on four surrogate inert ingredients using a range of physical chemical properties that would bracket those of octylphenol ethoxylate were conducted. Modeled acute drinking water values ranged from 0.001 parts per billion (ppb) to 41 ppb. Modeled chronic drinking water values ranged from 0.0002 ppb to 19 ppb. Further details of this drinking water analysis can be found at *http://www.regulations.gov* in the document "Alkylphenol Ethoxylates (APEs - JITF CST 5 Inert Ingredients). Revised Human Health Risk Assessment to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations," p. 22 and Appendix C in docket ID number EPA–HQ–OPP–2008–0890.

For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for octylphenol ethoxylate, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for acute and chronic dietary risk assessments for the parent compounds and for the metabolites of concern. These values, which are 10 to 1,000 times greater than the highest levels of these substance seen in numerous surface and ground water monitoring studies, were directly entered into the acute and chronic dietary exposure models.

3. *From non-dietary exposure*. The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Octylphenol ethoxylate may be used as an inert ingredient in pesticide products that are registered for specific uses that may result in residential exposures. A screening level residential exposure and risk assessment was completed for pesticide products containing octylphenol ethoxylate as an inert ingredient. In this assessment, representative scenarios, based on end-use product application methods and labeled application rates, were selected. For each of the use scenarios, the Agency assessed residential handler (applicator) inhalation and dermal exposure for use scenarios with high exposure potential (i.e., exposure scenarios with high-end unit exposure values) to serve as a screening assessment for all potential residential pesticides containing octylphenol ethoxylate. Similarly, residential postapplication dermal and oral exposure assessments were also performed utilizing high-end exposure scenarios. In the case of octylphenol ethoxylate, non-dietary exposures are to octylphenol ethoxylate only as there is no appreciable metabolism or degradation of octylphenol ethoxylate in any of the representative residential use scenarios. Further details of this residential exposure and risk analysis can be found at *http://www.regulations.gov* in the document "JITF Inert Ingredients. Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations" in docket ID number EPA–HQ–OPP–2008–0710.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf*.

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

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

D. Safety Factor for Infants and Children

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

2. *Pre-natal and post-natal sensitivity*. In the case of octylphenol ethoxylate, there was no increased susceptibility to the offspring of rats following pre-natal and post-natal exposure in the Harmonized Guideline 870.3650 combined repeated dose toxicity study with the reproduction/developmental toxicity screening test. The offspring effects (decreased body weight in male and female offspring) occurred at 300 mg/kg/day in the presence of maternal toxicity, which was manifested as clinical signs, decreased body-weight gain, increased liver weight and liver hypertrophy in males, and decreased thymus weight in females at 300 mg/kg/day. However, a study referenced in the petition (Hazelden and Wilson, 1986) suggests more severe developmental effects (supernumerary rib) following gestational exposure via the diet during gestation days 6–17. The Harmonized Guideline 870.3650 study did not include a skeletal examination of the offspring. Since the Harmonized Guideline 870.3650 study with octylphenol ethoxylate did not assess its impact on the estrogen system, it cannot be used alone to properly assess the most sensitive endpoint. However, selecting the POD from the Harmonized Guideline 870.3650 study, which is based on a NOAEL of 150 mg/kg/day and decreased body-weight gain in both sexes during the premating period, decreased thymus weight in females, and increased liver weight and liver hypertrophy in males at the LOAEL of 300 mg/kg/day, and retaining the FQPA SF of 10X is comparable to using the POD from the reproduction studies on the most toxicologically potent compound (nonylphenol) that assessed estrogenic activity (endpoint: Accelerated vaginal opening; POD: 10 mg/kg/day). The endpoint (accelerated vaginal opening) and point of departure (10 mg/kg/day) are considered health protective of effects not assessed in the Harmonized Guideline 870.3650 studies on the octylphenol ethoxylate.

For the octylphenol metabolite, the 2–generation reproduction study in rats showed a delay in the acquisition of preputial separation in both the F_1 and F_2 pups, and the timing of vaginal opening was accelerated in a study in prepubertal female rats. For the related nonylphenol, two of the multigeneration reproduction studies in rats and two studies in prepubertal female rats showed acceleration in the acquisition of vaginal patency. A delay in preputial separation was observed in male rats in a pubertal onset assay. The combined toxicology databases currently available on octylphenol and nonylphenol identify accelerated vaginal opening as the most consistent and sensitive endpoint, and a clear NOAEL of 10 mg/kg/day has been demonstrated.

In a developmental toxicity study with octylphenol ethoxylate, developmental toxicity was demonstrated, as evidenced by the increased incidence of supernumerary ribs following exposure to the dams during gestation days 6–17. However, the low pregnancy rate among all groups (56%–70%) in this study makes interpretation of the results difficult. Additionally, the Harmonized Guideline 870.3650 study did not include a skeletal examination of the offspring. A developmental toxicity study was identified in the octylphenol database, and a clear NOAEL of 15.6 mg/kg/day (post-implantation loss) was established. The POD for octylphenol was selected from this study for the acute dietary (females 13+) exposure. This study is considered appropriate and health protective of effects observed in the developmental toxicity study with octylphenol ethoxylate.

Since the rat reproduction studies on the most toxicologically potent compound (nonylphenol) identified a clear NOAEL of 10 mg/kg/day for the most sensitive endpoint (accelerated vaginal opening), and the selected POD of 10 mg/kg/day (NOAEL for accelerated vaginal opening) for the dietary risk assessment is protective of offspring effects, there are no residual concerns.

3. *Conclusion*. EPA has determined that the FQPA SF can be reduced to 1X for the octylphenol metabolite upon which the dietary assessment is based. This decision is based on the following findings:

i. The most sensitive endpoint from the most toxicologically potent compound (nonylphenol) was selected for risk assessment and is considered health protective. The database for nonylphenol is protective of octylphenol, which has a limited database. There are several studies on nonylphenol (two multigeneration reproduction studies, pubertal onset assays, uterotrophic assays), which demonstrate acceleration of vaginal opening in the rat. Accelerated vaginal opening is the most consistent and sensitive endpoint identified. Clear NOAELs for this endpoint have been identified following exposure to nonylphenol.

ii. While endpoints were not selected from the Harmonized Guideline 870.3650 study in rats following pre-natal and post-natal exposure to octylphenol ethoxylate based on concerns that the study did not look for impacts on the estrogen system, the Agency does note that no increased susceptibility was demonstrated in the offspring in the Harmonized Guideline 870.3650 study in rats following pre-natal and post-natal exposure to octylphenol ethoxylate.

iii. Although a developmental toxicity study was identified in the open literature for octylphenol ethoxylate with a developmental NOAEL of 70/mg/kg/day, a developmental study on octylphenol demonstrated an increase in post-implantation loss following exposure to the dams from gestation day 0–8. A clear NOAEL of 15.6 mg/kg/day was established for the offspring effects. Since the POD selected from that study for acute dietary exposure to the octylphenol metabolite is 15.6 mg/kg/day, this value is considered health protective of offspring effects that might be found following octylphenol ethoxylate exposure.

iv. There is a 2–generation reproduction study in rats on octylphenol that demonstrates no adverse effects on reproductive function.

v. Although the available mammalian toxicity database does not include any chronic toxicity data, there is one 2–generation reproduction study on octylphenol and several multigeneration reproduction studies on the most toxicologically potent compound in the risk assessment, nonylphenol, in which test animals were dosed for extended periods of time and across generations.

vi. No evidence of neurotoxicity was demonstrated in the database for octylphenol ethoxylate, octylphenol, or nonylphenol and thus there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

vii. The exposure assessments used in this risk assessment are considered to be highly conservative. In the absence of substantial information on environmental degradation, the Agency has conducted an assessment which assumes that 100% of octylphenol ethoxylate is degradated to the more toxic degradate, octylphenol. Further, the assessment assumed residues of octylphenol will be present in all foods consumed at levels consistent with the highest established pesticide tolerance, and in drinking water at a high-end estimated level of 100 ppb. The Agency anticipates that this assessment will signifcantly overestimate risk.

EPA has determined that the FQPA safety factor should be retained (10X) for octylphenol ethoxylate, the compound upon which the residential assessment is based. This decision is based on the following findings:

a. Although endpoints from the Harmonized Guideline 870.3650 study in rats following pre-natal and post-natal exposure to the octylphenol ethoxylate were selected for the residential and occupational exposure risk assessments, there are concerns that the study did not look for the most sensitive endpoints for the estrogen system.

b. The Agency does note that no increased susceptibility was demonstrated in the offspring in the Harmonized Guideline 870.3650 study in rats following pre-natal and post-natal exposure to octylphenol ethoxylate.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-term, intermediate-term, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk*. Using the exposure assumptions discussed in this unit for acute exposure, including the limitation of use of octylphenol ethoxylate to not more than 7% of the pesticide product, the acute dietary exposure from food and water to octylphenol ethoxylate willl occupy 37% of the aPAD for females 13 to 49 years old, the only population group for which an acute toxicity endpoint was established.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, including the limitation of use of octylphenol ethoxylate to not more than 7% of the pesticide product, EPA has concluded that chronic exposure to octylphenol ethoxylate from food and water will utilize 90% of the cPAD for children 1–2 years old the population group

receiving the greatest exposure. Based on the explanation in Unit IV.C.3., regarding residential use patterns, chronic residential exposure to residues of octylphenol is not expected.

3. *Short-term and intermediate-term risk*. Short-term and intermediate-term aggregate exposure takes into account short-term and intermediate term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Short-term and intermediate-term aggregate risk assessments for octylphenol ethoxylate combine high end residential short-term or intermediate-term exposures with average food and drinking water exposures, and compare this total to a short-term or intermediate-term POD.

The POD for the dietary risk assessment is 10 mg/kg/day and the LOC when examining the MOE is 100 for octylphenol ethoxylate. The POD for the residential risk assessment is 150 mg/kg/day and the LOC is 1,000 for octylphenol ethoxylate. For the purpose of aggregating risks from dietary and residential exposure, the Agency is using the Aggregate Risk Index (ARI) approach for aggregate risk assessment. This approach allows for combining exposures which must be compared to different NOAELs and different LOCs. Potential risks of concerns are identified by an ARI of less than 1. Short-term and intermediate-term aggregate risks for octylphenol ethoxylate are not of concern (values ranging from 1.0 to 4.3 for children and adults, respectively).

4. *Aggregate cancer risk for U.S. population*. The Agency has carefully considered the weight of the evidence with respect to carcinogenicity for both the parent compounds and for the degradate. There were no structral alerts for carcinogenicity amd there were equivocal mutagenicity findings in the literature studies. Based on a weight of the evidence consideration of the available data, the Agency believes that cancer risks would be negligible. However, due to the equivocal findings in the mutagenicity data base, the Agency is asking for confirmatory data.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to octylphenol ethoxylate residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An analytical method is not required for enforcement purposes since the Agency is not establishing a numerical tolerance for residues of octylphenol ethoxylate in or on any food commodities. EPA is establishing a limitation on the amount of octylphenol ethoxylate that may be used in pesticide formulations applied to growing crops and raw agricultural commodities. That limitation will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. 136 *et seq*. EPA will not register any such pesticide for sale or distribution that contains greater than 7% of octylphenol ethoxylate by weight in the pesticide formulation.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint U.N. Food and Agriculture Organization/ World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established a MRL for octylphenol ethoxylate.

C. Revisions to Petitioned-For Exemption from the Requirement of a Tolerance

EPA is revising the petitioned-for octylphenol ethoxylate exemption from the requirement of a tolerance under 40 CFR 180.910 by including a limitation of "not to exceed 7% of the pesticide formulation." As discussed in Unit IV.C., this limitation will ensure that there are no aggregate risks of concern. Additionally, EPA is also revising the octylphenol ethoxylate exemption from the requirement of a tolerance under 40 CFR 180.910 to include a 2-year time limitation. The exemption from the requirement of a tolerance for octylphenol ethoxylate will expire on May 17, 2012. This two-year time limitation is being established for two purposes:

1. To provide time for the development and submission of confirmatory toxicity data to address the equivocal results in the available genotoxicity studies conducted on octylphenol ethoxylate; and

2. To provide additional time, should the initial testing not confirm EPA's conclusion regarding the lack of a cancer concern, for registrants to attain EPA approval of registration amendments for reformulation of their pesticide products to remove octylphenol ethoxylate and to replace existing products with reformulated products.

EPA believes that its cancer conclusion can be confirmed by negative results in either *in vitro* or *in vivo* mutagenicity studies. EPA is recommending that supporters of the octylphenol ethoxylate tolerance exemption perform the following studies for confirmatory purposes:

A new Ames assay (Harmonized Guideline 870.5100 — Bacterial reverse mutation test) and a mouse lymphoma assay (Harmonized Guideline 870.5300 — *In vitro* mammalian cell gene mutation test).

A bone marrow assay (Harmonized Guideline 870.5395 — Mammalian erythrocyte micronucleus test).

Since *in vivo* mutagenicity studies such as the bone marrow assay are generally regarded as more definitive than *in vitro* studies, and a negative result in the bone marrow test may outweigh whatever results are found in the Ames test and mouse lymphoma assay, supporters of the octylphenol ethoxylate tolerance exemption may opt to conduct the mammalian erythrocyte micronucleus test in lieu of the two *in vitro* mutagenicity studies. If these data do not confirm EPA's cancer conclusion, then EPA will need two-year cancer bioassays in the mouse and rat (Harmonized Guideline 870.4200 — Carcinogenicity (mouse) and Harmonized Guideline 870.4300 — combined Chronic Toxicity/ Carcinogenicity (rat)) to make a safety finding in support of this tolerance exemption.

In conducting confirmatory testing, supporters of the octylphenol ethoxylate tolerance exemption should keep the following information in mind. EPA believes that the minimum time period for registrants to obtain approval of reformulated products and to replace existing products is 15 months. Thus, EPA plans to alert the registrant community no later than February 17, 2011 whether confirmatory data has been received and demonstrates that EPA's cancer conclusion was correct. If submitted data do confirm EPA's conclusion, EPA will notify registrants that it intends to remove the expiration date from the tolerance exemption prior to expiration of the exemption. If the

submitted data do not confirm the conclusion, EPA will inform registrants that they should assume that the tolerance exemption will expire on May 17, 2012 and that they should take all appropriate steps to insure that they do not release for shipment product that may result in food containing residues inconsistent with the dictates of the FFDCA. EPA does not intend to extend the expiration date for the exemption if it is determined that two-year cancer bioassays are needed to evaluate potential cancer risk. Additionally, if no confirmatory data are submitted by November 17, 2010. EPA will not have time to make a decision on any confirmatory data by February 17, 2011 and thus, at that time, EPA will inform registrants that they should assume that the tolerance exemption will expire on May 17, 2012 and that they should take all appropriate steps as indicated above.

VI. Conclusion

Therefore, an exemption from the requirement of a tolerance for residues of α-[*p*-(1,1,3,3-tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) when used as an inert ingredient at levels not to exceed 7% in pesticide formulations applied to growing crops and raw agricultural commodities after harvest under 40 CFR 180.910 is established with an expiration date of May 17, 2012.

VII. Statutory and Executive Order Reviews

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

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

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

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

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 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: May 10, 2010.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.910 is amended by adding alphabetically the following entry in the table of inert ingredients to read as follows:

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

* * * * *

Inert Ingredients	Limits	Uses
*	* * * *	
α-[*p*-(1,1,3,3-tetramethylbutyl)phenyl]-ω-hydroxypoly(oxyethylene) produced by the condensation of 1 mole of *p*-(1,1,3,3-tetramethylbutyl)phenol with a range of 1–14 or 30–70 moles of ethylene oxide: If a blend of products is used, the average range number of moles of ethylene oxide reacted to produce any product that is a component of the blend shall be in the range of 1–14 or 30–70 (CAS Reg. Nos. 9036–19–5, 9002–93–1).	Not to exceed 7% of pesticide formulation. Expires May 17, 2012.	Surfactants, related adjuvants of surfactants
*	* * * *	

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[FR Doc. 2010–11686 Filed 5–14–10; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8360

[LLWO25000—L12200000.PM000—241A.00]

RIN 1004–AD96

Visitor Services

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) is amending its regulations to remove the Land and Water Conservation Fund Act as one of the authorities of its recreation regulations, in accordance with the Federal Lands Recreation Enhancement Act of 2004 (REA). The final rule amends and reorders the prohibitions to separate those that apply specifically to campgrounds and picnic areas from those with more general application. The reordering is necessary to broaden the scope to include all areas where standard amenity, expanded amenity, and special recreation permit fees are charged under REA. The final rule also removes regulations that have been interpreted by the BLM Field Offices to require the BLM to publish supplementary rules for each area for failure to pay recreation fees, thus relieving the BLM from publishing separate rules for each area. Finally, this rule makes technical changes to maintain consistency with other BLM regulations.

DATES: This rule is effective on June 16, 2010.

ADDRESSES: Inquiries or suggestions should be delivered to U.S. Department of the Interior, Director (630), Bureau of Land Management, Mail Stop 401 LS, 1849 C St., NW., *Attention:* RIN: 1004–AD96, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: For information on the substance of the rule, please contact Hal Hallett at (202) 912–7252 or Anthony Bobo Jr. at (202) 912–7248. For information on procedural matters, please contact Chandra Little at (202) 912–7403. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individuals during normal business hours. FIRS is available twenty-four hours a day, seven days a week, to leave a message or question with these individuals. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

I. Background
II. Final Rule as Adopted and Response to Comments
III. Procedural Matters

I. Background

The BLM is revising its fee management regulations, policies, and procedures in accordance with the REA, 16 U.S.C. 6801 *et seq.,* 43 CFR part 2930 currently includes all recreation fee management regulations, including the requirement that visitors pay fees before occupying a campground or picnic area. The BLM is now amending 43 CFR part 8360 to add regulatory changes made necessary by the REA, including the removal of any language pertaining to recreation fees. In addition, the section addressing the collection of fossils is modified to include common plant fossils, reflecting long established BLM policies. The Omnibus Public Land Management Act (OPLMA) became law on March 30, 2009, after the publication of the proposed rule and includes provisions on Paleontological Resources Preservation (PRP) (Title VI, Subtitle D (Pub. L. 111–11, 123 Stat. 1172, 16 U.S.C. 470aaa *et seq.*)) The law requires that the Secretary of the Interior develop regulations to implement this subtitle. The OPLMA–PRP defines "casual collecting" as "* * * the collecting of a reasonable amount of common invertebrate and plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools resulting in only negligible disturbance to the Earth's surface and other resources." These regulations define terms as used in this definition. However, the OPLMA–PRP does not change the BLM's basic policy for allowing casual collecting of reasonable amounts of common invertebrate and common plant fossils from public lands for personal use without a permit, and therefore, the regulations at 43 CFR part 8360 do not conflict with the OPLMA–PRP.

Other changes were made that group related regulations in the same section to simplify language and clarify the intent, and to resolve inconsistencies between the existing provisions.

II. Final Rule as Adopted and Response to Comments

On October 3, 2008, the BLM published a proposed rule (73 FR 57564) to implement REA with a 60-day public comment period that ended on December 2, 2008. The BLM received four comments on the proposed rule. These comments supported the proposed rule and suggested a few minor revisions to make the regulations consistent with other BLM regulations. The comments specifically addressed activities relating to the recreational collection of rocks and paleontological resources on BLM lands.

Section 8360.0–3 Authority

The final rule removes the Land and Water Conservation Fund Act (LWCFA) (16 U.S.C. 4601–6a) as an authority for the regulations. The enactment of the REA changed the BLM's authority to collect recreation fees. Recreation fees that were previously authorized under the LWCFA are now authorized under REA. The BLM's policies and procedures have also been revised to reflect this new and revised authority. We received no comment on this section and therefore the final rule remains as proposed.

Section 8360.0–5 Definitions

In paragraph (c), the proposed rule added the word "recreation" as a modifier to the term "developed sites and areas" in order to clarify that the definition is specific to developed recreation sites and areas. The same language is inserted elsewhere in this rule to distinguish developed recreation sites and areas from other developed sites and areas used for non-recreation purposes. We received no comment on this section, thus the final rule remains as proposed.

Section 8365.1–5 Property and Resources

We received three comments on this section that stated that removing the term "rocks" from the current 43 CFR 8365.1–5(b)(2), as proposed, would lead to uncertainty about the collecting of rocks as a hobby without a permit on public lands. The commenters suggested that we retain the term "rocks" consistent with the current regulations and with the BLM's policy of allowing recreational collection of rocks and minerals on public lands. The BLM stated in the preamble to the proposed rule that the term "rocks" should be removed because it was already covered in regulations at 43 CFR 8365.1–5(b)(4) which by reference to 43 CFR subpart 3604 allows the recreational collection of "common" rocks without a permit. However, the regulations at 43 CFR part 3600 do not address the recreational collection of rocks on public lands without a permit. The Materials Act does not allow recreational collection of rocks and payment is required. Section 8365.1–5(b) makes an exception for the

recreational collection of rocks in reasonable quantities for personal use under Section 302(a) and (b) of the Federal Land Policy and Management Act. Because of this and to address the commenters' concern, in the final rule the BLM did not remove the word "rocks" from section 8365.1–5(b)(2).

We received two comments on this section that asked that the final rule show that the regulation applies to "common plant fossils" as well as "common invertebrate fossils." The commenters said that the intent of this revision is to make clear the BLM's longstanding policy to allow the recreational collection of "common invertebrate fossils" as well as "common plant fossils." Adding "common" in front of "plant" clarifies the BLM's intent that only "common plant fossils" may be collected. The commenters also suggested that by specifically mentioning fossil plants in the regulations, the BLM gives equal regulatory weight to both types of fossils and more clearly states the BLM's intent in a single place. We agree with the commenters and have revised the final rule. Allowing the hobby collections of "common fossil plants" would not cause a significant loss of paleontological information since the public is currently allowed to collect common plant fossils, and it would provide the public continued opportunities to pursue this aspect of recreational collecting. In addition to responding to the comment, this change will correct an oversight in this provision and clarify what has been a long-standing BLM policy to allow the recreational collecting of common invertebrate and common plant fossils, not just common invertebrate fossils. This policy was previously incorporated into BLM Handbook H–8270–1, "General Procedural Guidance for Paleontological Resources Management," which provides that, subject to the provisions of 43 CFR subpart 8365, and unless otherwise prohibited by land use plans or other authorities, common invertebrate and common plant fossils may be collected in reasonable amounts for noncommercial purposes without a permit. Furthermore, this clarification is in agreement with the new law for paleontological resources preservation (OPLMA–PRP), and will benefit the public when casually collecting common invertebrate and common plant fossils from public lands.

Therefore, in the final rule we revised section 8365.1–5(b)(2) to read as set forth in the regulatory text of this final rule.

Two comments suggested the need to clarify the BLM's policy of prohibiting the sale or barter not only between commercial fossil dealers, but also to hobby collectors. This revision would clarify the BLM's policy of prohibiting the sale of fossils. However, the new paleontological resources preservation provision in (OPLMA–PRP) defines "casual collecting" as "* * * the collecting of a reasonable amount of common invertebrate and plant paleontological resources for non-commercial personal use, either by surface collection or the use of non-powered hand tools resulting in only negligible disturbance to the Earth's surface and other resources." The BLM will propose regulations in the near future that will implement the OPLMA–PRP and will define the terms in that rulemaking. Therefore, the BLM does not believe that it is necessary to provide clarifying language at this time.

Section 8365.2–3 Occupancy and Use

The provisions in this section have been reordered to separate those that apply specifically to campgrounds and picnic areas from those that apply to all developed recreation sites and areas, including campgrounds and picnic areas. The restructuring is in response to a need to include all areas where standard amenity, expanded amenity, and special recreation fees are authorized under the REA. This also brings this section into compliance with 43 CFR part 2930, which was previously rewritten in response to the REA.

The rule also amends this section by removing as a prohibited act the failure to pay fees. This prohibition is already included in 43 CFR 2933.33, so it is unnecessary in these regulations. As a result of this rule change, it is also no longer necessary to include fee requirements in supplementary rules issued under section 8365.1–6. We received no comments on these revisions and therefore the final rule remains as proposed.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These final regulations are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866.

(1) These final regulations will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.

(2) These final regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) These final regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients.

(4) These final regulations do not raise novel legal or policy issues.

The BLM policies and procedures have merely been amended to reflect new statutory authority, and to remove inconsistencies in previous language.

National Environmental Policy Act (NEPA)

The BLM has determined that this final rule merely amends the statutory authority of our recreation regulations from the LWCFA to the REA. This final rule will bring the BLM's recreation regulations into compliance with the REA. The final rule amends and reorders the prohibitions to separate those that apply specifically to campgrounds and picnic areas from those with more general application, but does not change their effect. It clarifies that common plant fossils are available to recreational collectors, without changing the BLM's policy. This rule also resolves minor inconsistencies between existing provisions. The BLM has analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* Council on Environmental Quality (CEQ) regulations, 40 CFR part 1500. The CEQ regulations, at 40 CFR 1508.4, define a "categorical exclusion" as a category of actions that do not individually or cumulatively have a significant effect on the human environment. The regulations further direct each department to adopt NEPA procedures, including categorical exclusions (40 CFR 1507.3). The BLM has determined that this rule is categorically excluded from further environmental analysis under NEPA in accordance with 43 CFR 46.210(i), which categorically excludes "[p]olicies, directives, regulations and guidelines: that are an administrative, financial, legal, technical, or procedural nature. * * *" In addition, the BLM has determined that none of the extraordinary circumstances listed in 43 CFR 46.215 applies to this rule.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule

will have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The final rule pertains to individuals and families recreating on the public lands and not to small businesses or other small entities. Therefore, the BLM has determined under the RFA that this final rule will not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This final rule is not a "major rule" as defined at 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. That is, it will not have an annual effect on the economy of $100 million or more; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises. The final rule merely amends the regulations to change the statutory authority of the BLM's recreation regulations from the LWCFA to the REA, makes technical changes to bring our recreation regulations into compliance with the REA, and makes them internally consistent. The rule also amends and reorders the prohibitions to separate those that apply specifically to campgrounds and picnic areas from those with more general application.

Unfunded Mandates Reform Act

This final rule will not impose an unfunded mandate on state, local, or Tribal governments or the private sector, in the aggregate, of $100 million or more per year; nor does this rule have a significant or unique effect on state, local, or Tribal governments. The rule imposes no requirements on any of these entities. The BLM has already shown, in the previous paragraphs of this section of the preamble, that the change in this rule will not have effects approaching $100 million per year on the private sector. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

This final rule is not a government action capable of interfering with constitutionally protected property rights. It merely updates the regulations to reflect changes in authority for the BLM recreation program covered by the regulations, and makes editorial changes as discussed in this preamble. Therefore, the Department of the Interior has determined that the rule will not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

This final rule will not have a substantial direct effect on the states, on the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the levels of government. It will not apply to states or local governments or state or local governmental entities. Therefore, in accordance with Executive Order 13132, the BLM has determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the BLM has determined that this final rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that this rule does not include policies that have tribal implications. This rule has no effect on Tribal lands, and it affects members of Tribes only to the extent that they use public lands and facilities for recreation. This rule will bring our recreation regulations into compliance with the REA.

Information Quality Act

In developing this final rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Section 515 of Pub. L. 106–554).

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, the BLM has determined that this final rule will not have substantial direct effects on energy supply, distribution, or use, including a shortfall in supply or price increase. The rule has no bearing on energy development, but merely changes the authority provisions for and rearranges certain prohibited act provisions for recreational visitors on the public lands. This rule should have no effect on the volume of visitation or on consumption of energy supplies.

Executive Order 13352, Facilitation of Cooperative Conservation

In accordance with Executive Order 13352, the BLM has determined that this rule is administrative in nature and only reflects changes in authority, and reorganizes and clarifies certain provisions. It does not impede facilitating cooperative conservation. It does not affect the interests of persons with ownership or other legally recognized interests in land or other natural resources, improperly fail to accommodate local participation in the Federal decision-making process, or relate to the protection of public health and safety.

Paperwork Reduction Act

These regulations do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Authors

The principal authors of this rule are Hal Hallet and Anthony Bobo, Jr. of the Recreation and Visitor Services Division, Washington Office, BLM, assisted by Chandra Little of the Division of Regulatory Affairs, Washington Office, BLM.

List of Subjects in 43 CFR Part 8360

Penalties, Public lands, reporting and recordkeeping requirements, and Wilderness areas.

■ For the reasons explained in the preamble, and under the authority of 43 U.S.C. 1740, amend chapter II, subtitle B of title 43 of the Code of Federal Regulations as follows:

PART 8360—VISITOR SERVICES

■ 1. Revise the authority citation for part 8360 to read as follows:

Authority: 43 U.S.C. 1701 *et seq.,* 43 U.S.C. 315a, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.,* and 16 U.S.C. 1241 *et seq.*

Subpart 8360—General

■ 2. Revise § 8360.0–3 to read as follows:

§ 8360.0–3 Authority.

The regulations of this part are issued under the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*), the Sikes Act (16 U.S.C. 670g), the Taylor Grazing

Act (43 U.S.C. 315a), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Act of September 18, 1960, as amended, (16 U.S.C. 877 *et seq.*), and the National Trails System Act (16 U.S.C. 1241 *et seq.*).

■ 3. Amend § 8360.0–5 by revising paragraph (c) to read as follows:

§ 8360.0–5 Definitions.

* * * * *

(c) *Developed recreation sites and areas* means sites and areas that contain structures or capital improvements primarily used by the public for recreation purposes. Such sites or areas may include such features as: Delineated spaces for parking, camping or boat launching; sanitary facilities; potable water; grills or fire rings; tables; or controlled access.

* * * * *

Subpart 8365—Rules of Conduct

■ 4. Revise § 8365.1–5(b)(2) to read as follows:

§ 8365.1–5 Property and resources.

* * * * *

(b) * * *

(2) Nonrenewable resources such as rock and mineral specimens, common invertebrate and common plant fossils, and semiprecious gemstones;

* * * * *

■ 5. Revise § 8365.2–3 to read as follows:

§ 8365.2–3 Occupancy and use.

In developed camping and picnicking areas, no person shall, unless otherwise authorized:

(a) Pitch any tent, park any trailer, erect any shelter or place any other camping equipment in any area other than the place designed for it within a designated campsite;

(b) Leave personal property unattended for more than 24 hours in a day use area, or 72 hours in other areas. Personal property left unattended beyond such time limit is subject to disposition under the Federal Property and Administration Services Act of 1949, as amended (40 U.S.C. 484(m));

(c) Build any fire except in a stove, grill, fireplace or ring provided for such purpose;

(d) Enter or remain in campgrounds closed during established night periods except as an occupant or while visiting persons occupying the campgrounds for camping purposes;

(e) Occupy a site with more people than permitted within the developed campsite; or.

(f) Move any table, stove, barrier, litter receptacle or other campground equipment.

Wilma A. Lewis,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 2010–11612 Filed 5–14–10; 8:45 am]

BILLING CODE 4310–84–P

Proposed Rules

Federal Register
Vol. 75, No. 94
Monday, May 17, 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.

FEDERAL ELECTION COMMISSION

5 CFR Chapter XXXVII

11 CFR Part 7

[NOTICE 2010–05]

RIN 3209–AA15

Standards of Conduct

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission ("Commission" or "FEC"), with the concurrence of the office of Government Ethics ("OGE"), seeks comments on proposed revisions to the "Standards of Conduct," which are the FEC rules that govern the conduct of Commissioners and Commission employees. The proposed rules would update the Commission's current regulations to reflect statutory changes enacted after the Standards of Conduct were originally promulgated in 1986, and to conform to regulations issued by OGE and the Office of Personnel Management ("OPM"). OGE's regulations establish a government-wide standard of ethical conduct for the Executive Branch and independent agencies, and are known as OGE's Standards of Ethical Conduct. In addition to the proposed revisions to the FEC's Standards of Conduct, the Commission, with OGE's concurrence, is also proposing new rules that would supplement, for Commissioners and employees of the FEC, the OGE Standards of Ethical Conduct for Employees of the Executive Branch. The proposed rules that follow do not represent a final decision by the Commission or OGE on the issues presented by this rulemaking. The supplementary information that follows provides further information.

DATES: Comments must be received on or before June 16, 2010.

ADDRESSES: All comments must be in writing, must be addressed to Robert M. Knop, Assistant General Counsel, and must be submitted in e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail or fax to ensure timely receipt and consideration. E-mail comments must be sent to *ethicsrules@fec.gov.* If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Attorneys Mr. Anthony T. Buckley or Mr. Ethan A. Carrier, 999 E Street, NW., Washington DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Overview of OGE Rules Implementing the Ethics Reform Act and Proposed FEC Supplemental Rules

A. Legal Authority

The Ethics Reform Act of 1989 [1] includes restrictions on gifts, travel, outside activities, and outside employment. *See* Public Law 101–194, tit. III and VI, 103 Stat. 1716 (1989). It authorizes the Office of Government Ethics ("OGE") to implement regulations concerning the conduct of executive branch employees. *See* 5 U.S.C. 7351(c). In 1992, OGE issued a final rule setting forth uniform standards of ethical conduct and an interim final rule on financial disclosure, and in 1996 issued a final rule on financial interests, all for executive branch departments and agencies of the Federal Government and their employees. These three executive branch-wide regulations, as corrected and amended, are codified at 5 CFR parts 2634, 2635, and 2640.[2]

The OGE regulations implementing the Ethics Reform Act supersede any agency standards of conduct regulations previously issued and therefore supersede, with some exceptions, the Commission's current regulations in 11 CFR part 7. Although agencies may still issue regulations to supplement OGE's Standards of Ethical Conduct in order to accommodate specific agency needs, these regulations must be issued in accordance with OGE's rules, and must be submitted to OGE for prior approval. *See* 5 CFR 2635.105(a) and (b). Agencies may, however, retain any regulations based on their own separate statutory authority or that address different, non-ethics matters.

B. Topics Addressed in OGE and OPM Regulations

OGE regulations address gifts from outside sources, gifts between employees, conflicting financial interests, impartiality in performing official duties, pursuit of other employment, misuse of position, and outside employment and activities. *See* 5 CFR part 2635.[3]

In addition to OGE's Standards of Conduct, Commission employees are subject to certain rules issued by OPM concerning employee responsibilities and conduct. *See* 5 CFR part 735. These OPM rules address restrictions on certain gambling activities, conduct prejudicial to the government, and unauthorized examination training for individuals preparing to take civil and Foreign Service examinations. *See* 5 CFR part 735.

FEC and OGE have determined that the following proposed supplemental regulations are necessary and appropriate in view of FEC's programs and operations and to fulfill the purposes of the OGE standards. The supplemental regulations proposed will be issued in new chapter XXXVII of title 5 of the CFR. In addition, the FEC is revising its current regulations at 11 CFR part 7 to conform to the OGE and OPM regulations, without compromising the Commission's essential independence in its core

[1] Public Law 101–194, 103 Stat. 1716 (1989).

[2] Shortly before Congress passed the Ethics Reform Act, the President issued Executive Order 12674, which sets forth basic principles of ethical conduct for Federal employees and requires OGE to promulgate "regulations that establish a single, comprehensive, and clear set of executive-branch standards of conduct." E.O. 12674, 54 FR 15159, 15160 (Apr. 12, 1989). This Executive Order was later modified. E.O. 12731, 55 FR 42547 (Oct. 17, 1990). OGE's regulations also implement Executive Order 12674, as modified by Executive Order 12731.

[3] The remainder of this section is only a brief summary. Important additional restrictions and exceptions may apply. Readers should consult the cited regulations for further information.

mission of administering Federal campaign finance laws.

II. Analysis of the Proposed Regulations

The following discussion explains the Commission's proposal to amend the rules that govern the conduct of Commissioners and Commission employees by adding supplemental regulations in a new chapter XXXVII of 5 CFR, consisting of part 4701, and by revising the Commission's Standards of Conduct in 11 CFR part 7. The Commission seeks comment on the proposed rules.

A. Proposed Supplemental Regulations in 5 CFR part 4701

1. Proposed 5 CFR 4701.101—Scope

Proposed 5 CFR 4701.101 states the authority for the supplemental regulations, which includes 2 U.S.C. 437c(a)(3), 5 U.S.C. 7301, and 5 U.S.C. App. (Ethics in Government Act of 1978). Proposed 5 CFR 4701.101(a) indicates that the regulations of 5 CFR part 4701 apply to both members of the Commission ("Commissioners") and employees of the Commission. Proposed 5 CFR 4701.101(b) lists some of the other regulations in title 5 and 11 CFR part 7 that would govern the ethical conduct of Commissioners and employees.

2. Proposed 5 CFR 4701.102—Prior Approval for Certain Outside Employment and Activities

The OGE Standards of Ethical Conduct supersede the Commission's current regulation at 11 CFR 7.9(f) concerning prior approval for outside employment and activities. However, an agency may issue supplemental regulations with OGE's concurrence that require the agency's employees to obtain approval before engaging in outside employment or activities. *See* 5 CFR 2635.105 and 2635.803.

The Commission has found the current approval requirement for outside employment or activities useful in ensuring that the outside employment and activities of its employees conform to all applicable laws and regulations. Because that requirement is deemed necessary to the administration of its ethics program, the Commission, with the concurrence of OGE, proposes to renew its requirement for prior approval of certain outside employment and activities, and to issue a supplemental regulation in accordance with 5 CFR 2635.803 at proposed 5 CFR 4701.102.

Proposed section 4701.102 would differ significantly from current 11 CFR 7.9(f). The major difference is in the scope of the outside employment and activities covered by the proposed regulation. Current 11 CFR 7.9(f) requires Commission employees to obtain prior approval for all outside employment and activities. The term "outside employment or other outside activity" is defined broadly at current 11 CFR 7.2(h) to include "any work, service or other activity performed by an employee." In contrast, proposed 5 CFR 4701.102 requires prior approval from the Designated Agency Ethics Official ("DAEO") only for outside activities that are related to the employee's official duties or involve the application of the same specialized skills or the same educational background as used in the performance of the employee's official duties. This rule, which draws on portions of prior approval regulations adopted by several other Federal agencies with OGE concurrence, is narrowly constructed to address agency concerns, while limiting the administrative burdens placed on employees. *See, e.g.,* 5 CFR 3801.106 (Department of Justice); 5 CFR 4501.103 (OPM); 5 CFR 6301.102 (Department of Education); and 5 CFR 8601.102 (Federal Retirement Thrift Investment Board).

Proposed 5 CFR 4701.102(a) would set out the definitions of the terms used in proposed 5 CFR 4701.102(b). The definitions for "active participant," "employee," and "related to the employee's official duties" refer back to the definitions of these terms used in the general standards of conduct regulations issued by OGE.

Proposed 5 CFR 4701.102(a)(2) would define "employee" as defined in OGE's regulation at 5 CFR 2635.102(h), which includes "any officer or employee of an agency." This definition includes Commissioners. However, proposed section 4701.102(b) would exclude Commissioners from its procedures.[4] Instead, proposed 11 CFR 7.6, discussed below, would address outside employment and activities by Commissioners.

Proposed 5 CFR 4701.102(a)(3) would define "outside employment" to mean any form of non-Federal employment, business relationship or activity involving the provision of personal services, with or without compensation, other than in the discharge of official duties. The proposed definition provides a non-exhaustive list of services such as serving as a lawyer, officer, director, trustee, agent, consultant, contractor, general partner, active participant, teacher, speaker, writer, or any other services provided by an individual. This proposed definition of "outside employment" is similar to those adopted by other Federal agencies and is designed to cover a broad range of outside employment and activities in which a Commission employee may seek to engage. *See, e.g.,* 5 CFR 3801.106 (Department of Justice) and 5 CFR 5701.101 (Federal Trade Commission). Notably, this definition of "outside employment" includes unpaid activity which may not conform to the usual understanding of "employment."

Proposed 5 CFR 4701.102(b) states that a Commission employee other than a special Government employee[5] must obtain prior, written approval from the DAEO before engaging in outside employment or activities where the services provided are related to the employee's official duties or involve the application of the same specialized skills or the same educational background as used in the performance of the employee's official duties. Accordingly, Commission employees would be required to obtain prior, written approval only when they sought to engage in outside employment or activities that are related, in one of those respects, to their official duties. For example, a Commission attorney wishing to engage in weekend employment as a salesperson for a retail organization would not need to seek prior approval because such employment would not be related to his or her official duties or involve the application of the same specialized skills or educational background as used in his or her position at the Commission. On the other hand, a Commission attorney wishing to represent a relative in a lawsuit filed against a private party in State court *would* be required to seek prior approval because such representation would involve the application of the same specialized skill or same educational background as used in his or her position with the Commission.

Proposed section 5 CFR 4701.102(c) would establish the procedure for the submission of approval requests to the DAEO. It would require that the request be submitted through all of the employee's supervisors. For purposes of this section, the Staff Director, the

[4] The Act already restricts outside activities of Commissioners. *See* 2 U.S.C. 437c(a)(3). Regulations implementing this provision are already in place, *see* 11 CFR 7.9, and are being reassigned in this rulemaking. *See* below.

[5] "Special Government employee" is defined at 5 CFR 2635.102(l). Special Government employees are temporary or part time employees hired to provide expertise about the industry in which they work. Such special Government employees are expected to have outside employment, and it is unnecessary to require them to seek prior approval for such outside employment.

General Counsel, the Inspector General, the Chief Financial Officer, a Commissioner, or the Commission would be considered the final level of supervision for their respective subordinates. A request would need to provide certain information, including the identity of the person, group, or organization for which the employee intends to provide services. Deadlines for a supervisor to respond to a request of a bargaining unit employee, and for a bargaining unit employee to submit a grievance in the event a request is denied, are contained in the Commission's Labor-Management Agreement. *See* Article 31, Labor-Management Agreement between the Federal Election Commission and Chapter 204 of the National Treasury Employees Union, dated May 2, 2007.

Proposed 5 CFR 4701.102(d) would set forth the standard for approval of an employee's request regarding outside employment or activity, which is not in current 11 CFR 7.9(f). Approval would be granted only upon a determination that the outside employment or activity would not involve conduct prohibited by statute or Federal regulations. In making this determination, the regulations to be considered would include those at 5 CFR part 2635. Therefore, the approval would depend on (1) whether the outside employment or activity would create conflicting financial interests, or (2) a lack of impartiality in performing official duties, or (3) misuse of Government position, and (4) whether the employment or activity otherwise complies with 5 CFR part 2635.

The Commission invites comments on this proposal and on whether an alternative system of seeking prior approval is preferable to that proposed and, if so, how an alternative system should be structured.

B. Proposed Revisions to the Commission's Standards of Conduct in 11 CFR Part 7

The FECA provides authority for some of the Commission's regulations in 11 CFR part 7, including current 11 CFR 7.14 and 7.15, which concern confidentiality of enforcement matters and are based on 2 U.S.C. 437g(a)(12). The Commission proposes to retain these rules. The Commission also proposes to retain provisions that are informational or procedural in nature, such as current 11 CFR 7.1 (purpose and applicability), 7.2 (definitions), 7.4 (interpretation and advisory service), 7.5 (reporting suspected violations), and 7.6 (disciplinary and corrective actions). The revisions and clarifications proposed for these provisions are discussed below.

As explained above in *Overview of OGE Rules Implementing the Ethics Reform Act,* many of the Commission's regulations in current 11 CFR part 7 have been supplanted by OGE's regulations. Accordingly, the Commission proposes to remove the supplanted regulations from the Commission's Standards of Conduct in current 11 CFR part 7.

The Commission's current regulation concerning political activity by Commissioners and Commission employees has been supplanted by the Hatch Act Reform Amendments of 1993. *See* Public Law 103–94, 107 Stat. 1001 (1993); current 11 CFR 7.11. Therefore, the Commission proposes to remove that regulation. *See* discussion below.

The regulations that the Commission proposes to retain and revise would also be redesignated. The following chart lists the removals, revisions, and redesignations proposed for current 11 CFR part 7.

Current 11 CFR Section	Proposal	Redesignated 11 CFR section	Supplanted by 5 CFR section
7.1(a)	Remove as supplanted		2635.101.
7.1(b)[6] & (c)	Remove as supplanted		2635.102(h).
7.1(b)[7]	Revise.		
7.2	Revise.		
7.3	Remove as supplanted		2638.701–2638.706.
7.4	Revise and redesignate	7.3	
7.5	Revise and redesignate	7.4	
7.6	Revise and redesignate	7.5	
7.7	Remove as supplanted		2635.101.
7.8	Remove as supplanted		2635.201–2635.205.[8]
7.9(a)	Revise and redesignate	7.6	
7.9(b)–(f)	Remove as supplanted		2635.801–2635.809.[9]
7.10	Remove as supplanted		2635.401–2635.403.[10]
7.11	Remove as supplanted		Hatch Act Amendments.[11]
7.12	Remove as supplanted		2635.402.[12]
7.13	Remove as supplanted		2635.704.
7.14	Revise and redesignate	7.7	
7.15	Revise and redesignate	[13]7.8	
7.16	Remove as supplanted		2635.901–2635.902.
7.17–7.21	Remove as supplanted		2635.102(h).[14]
7.22–7.33	Remove as supplanted		18 U.S.C. 207.[15]

[6] This entry refers to the portion of current 11 CFR 7.1(b) that separately includes special Government employees. *See also* proposed 11 CFR 7.2(d).

[7] This entry refers to the portion of current 11 CFR 7.1(b) that explains that current 11 CFR part 7 applies to Commission members and employees.

[8] *See also* 5 CFR 2635.301–2635.304.

[9] *See also* proposed 5 CFR part 4701.

[10] *See also* 5 CFR 2635.501–2635.503 and 2635.703.

[11] *See also* discussion below.

[12] *See also* 5 CFR 2635.502, 2635.704–2635.705, and discussion below.

[13] The citation to current 11 CFR 7.15 in 11 CFR 201.1 would be revised to cite proposed 11 CFR 7.8.

[14] *See also* proposed 11 CFR 7.2(d) (including special Government employees).

[15] *See also* discussion below.

1. Proposed 11 CFR 7.1—Scope

Proposed 11 CFR 7.1(a) would state that the regulations in revised 11 CFR part 7 apply to all members and employees of the Commission. Proposed 11 CFR 7.1(b) would list the other regulations in title 5 of the CFR and proposed 5 CFR part 4701 that would govern the ethical conduct of Commissioners and employees. Current 11 CFR 7.1(b), which states that the regulations in current 11 CFR part 7 apply to all employees and "special Commission employees," would be removed. As explained below, proposed 11 CFR 7.2(d) would include "special Government employees" in the definition of "employee." Although the Commission's current regulations use the term "special Commission employee," the proposed regulation uses the term "special Government employee" as defined at 5 CFR 2635.102(l) in order to better conform to OGE terminology. Because proposed 11 CFR 7.1(a) states that the regulations in revised 11 CFR part 7 apply to all Commission employees, which includes special Government employees, current paragraph (b) is no longer necessary. Current 11 CFR 7.1(c), which states that the regulations in current 11 CFR part 7 must be construed in accordance with any applicable laws, regulations, and the Commission's Labor-Management Agreement also would be removed because it is unnecessary to state that other laws, regulations, and agreements apply.

2. Proposed 11 CFR 7.2—Definitions

Proposed 11 CFR 7.2 would continue to set forth the definitions used in 11 CFR part 7. The definition of "Commission" in current 11 CFR 7.2(a) would remain unchanged. The definition of "Commissioner" in current 11 CFR 7.2(b) would be revised slightly. Whereas current paragraph (b) of 11 CFR 7.2 defines "Commissioner," in part, as "a *voting* member of the Federal Election Commission," proposed 11 CFR 7.2(b) would delete the word "voting" from the definition. The word "voting" is no longer necessary because all members of the Commission are currently voting members. This definition includes a Commissioner who holds his or her position by virtue of a recess appointment.

The definition of "conflict of interest" in current section 7.2(c) would be removed. Instead, the Commission would rely on OGE regulations and regulatory definitions regarding conflicts of interest, except for the provisions in proposed 11 CFR 7.6 governing outside employment and activities of Commissioners. *See, e.g.,* 5 CFR 2635.801–2635.809. Because proposed section 7.6 would not use the phrase "conflict of interest," a definition of that phrase specific to 11 CFR part 7 would no longer be needed.

The terms "Designated Agency Ethics Officer" and "Ethics Officer" in current 11 CFR 7.2(d) would be replaced with the term "Designated Agency Ethics Official" in proposed section 7.2(c) and throughout the proposed regulations. *See* proposed 11 CFR 7.3, 7.4, and 7.5. These changes would make the Commission's regulations consistent with OGE's regulations at 5 CFR 2638.104. Proposed 11 CFR 7.2(c) would also include a provision from current 11 CFR 7.4 stating that the Commission's General Counsel serves as the Designated Agency Ethics Official.

In proposed 11 CFR 7.2(d), the definition of "employee" from current 11 CFR 7.2(e) would be amended to include a "special Government employee as defined in 18 U.S.C. 202(a)." OGE regulations at 5 CFR 2635.102(h) include "special Government employee" within the general definition of "employee," thus subjecting special Government employees to the same Standards of Conduct as other employees, with certain limitations. Proposed section 7.2(d) would operate similarly.

Proposed section 7.2(e) defines "*ex parte* communication" for the purposes of 11 CFR part 7. This definition is based on the definition of "*ex parte* communication" at 11 CFR 201.2(a) applicable to non-enforcement situations.[16] Similar to that definition, proposed section 7.9(e) defines "*ex parte* communication" as any written or oral communication by any person outside the agency to any Commissioner or any member of any Commissioner's staff, but not to any other Commission employee, that imparts information or argument regarding prospective Commission enforcement action or potential action concerning any pending enforcement matter. Similar to current Commission regulations at 11 CFR 111.22 and part 201, the proposed definition is limited to Commissioners and their staff members because the Commissioners are empowered to make decisions on enforcement matters, and their staff members are their confidential assistants on these matters. The Commission notes that "matter" as used in the proposed rule includes enforcement Matters Under Review, Administrative Fines, and Alternative Dispute Resolution cases ("ADR"). *See also* discussion of proposed 11 CFR 7.9, below.

Proposed section 7.2(f) defines the term "Inspector General." The definitions of "former employee," "official responsibility," "person," and "special Commission employee" at current 11 CFR 7.2(f), (g), (i), and (j), respectively, would be removed from proposed section 7.2 as these definitions are no longer necessary. In addition, paragraph (h) of current 11 CFR 7.2 defining "outside employment or other outside activity" would be removed. Because the Commission proposes, with OGE concurrence, to replace much of current 11 CFR 7.9 (outside employment or activities by Commission employees) with a supplemental regulation at 5 CFR 4701.102, paragraph (h) of current 11 CFR 7.2 defining "outside employment or other outside activity" would be superfluous.

3. Proposed 11 CFR 7.3—Interpretation and Advisory Service

Proposed 11 CFR 7.3 is a revised version of current 11 CFR 7.4, which addresses interpretation and advisory service. Proposed 11 CFR 7.3(a) adds references to 5 CFR parts 735, 2634, 2635, 2640, and 4701 as subjects on which a Commissioner or employee may seek interpretation and advice. Also, proposed paragraph (a) identifies the DAEO as the person from whom advice should be sought. Proposed paragraph (b) clarifies that the DAEO, a Commissioner, or an employee may request an opinion from the Director of OGE concerning interpretations of 5 CFR parts 2634, 2635, or 2640.

4. Proposed 11 CFR 7.4—Reporting Suspected Violations

Proposed 11 CFR 7.4 is a revised version of current 11 CFR 7.5 and addresses the reporting of suspected violations of the FEC's Standards of Conduct and OGE's Standards of Ethical Conduct. Proposed section 7.4 requires the reporting of suspected violations of 5 CFR parts 735, 2634, 2635, 2640, and 4701 or revised 11 CFR part 7 to the DAEO, the Inspector General, or other appropriate law enforcement authorities.

5. Proposed 11 CFR 7.5—Corrective Action

Proposed 11 CFR 7.5 informs employees that a violation of the FEC's Standards of Conduct or OGE's Standards of Ethical Conduct may be cause for appropriate corrective action, disciplinary action, or adverse action, in

[16] The treatment of *ex parte* communications in enforcement matters is addressed in 11 CFR 111.22. The treatment of *ex parte* communications in audits, rulemakings, advisory opinions, public funding cases, and litigation matters is covered by 11 CFR part 201.

addition to any penalty prescribed by law, including criminal penalties. Proposed section 7.5 is based on current paragraph 7.6(a). Procedures for taking corrective, disciplinary, and adverse actions are set forth in other authority. Accordingly, the procedures in current paragraphs 7.6(b) and (c) are unnecessary and would be deleted.

6. Proposed 11 CFR 7.6—Outside Employment and Activities by Commissioners

Proposed 11 CFR 7.6 addresses outside employment or activities of Commissioners.[17] FECA provides authority for additional restrictions on Commissioners' outside employment and activities. *See* 2 U.S.C. 437c(a)(3).

Similar to the current rule at 11 CFR 7.9(a), proposed 11 CFR 7.6 states that no Commissioner may devote a substantial portion of his or her time to any other business, vocation, or employment. This regulation would also retain the current rule's allowance of a 90-day period for a Commissioner, following the start of Commission service, to limit such activity.

As noted in the 1986 Explanation and Justification for the current rule on Commissioners' outside activities, the use of the words "substantial portion" of a Commissioner's time to trigger the regulation's prohibitions is based on the legislative history of 2 U.S.C. 437c(a)(3). *See* Explanation and Justification for Final Rules on Standards of Conduct for Agency Employees, 51 FR 34440, 34442 (Sept. 29, 1986). The Conference Report that accompanied the 1976 amendments to FECA discusses 2 U.S.C. 437c(a)(3): "The conferees agree that the requirement is intended to apply to members who devote a substantial portion of their time to such business, vocation, or employment activities." H.R. Rep. No. 94–1057, at 34 (1976) (Conf. Rep.), *reprinted in Legislative History of Federal Election Campaign Act Amendments of 1976,* at 1028 (1977). The proposed rule continues this interpretation.

7. Proposed 11 CFR 7.7—Prohibition Against Making Complaints and Investigations Public

FECA prohibits any person from making public "any notification or investigation" of a complaint under 2 U.S.C. 437g without the written consent of the person receiving the notification or with respect to whom the investigation is made. 2 U.S.C. 437g(a)(12)(A); 11 CFR 111.21. Proposed 11 CFR 7.7 derives its authority from that provision of FECA. The proposed rule follows current 11 CFR 7.14.

8. Proposed 11 CFR 7.8—*Ex Parte* Communications in Enforcement Actions

Proposed 11 CFR 7.8 is a revised version of current 11 CFR 7.15 and addresses *ex parte* communications. The title of proposed 11 CFR 7.8 clarifies that the rule applies specifically to *ex parte* communications in enforcement matters. Proposed 11 CFR 7.8(a) and (d) would revise the rule to clarify that the prohibition on *ex parte* communications would apply only to Commissioners and any member of a Commissioner's staff. These proposed changes would conform proposed 11 CFR 7.8 to the current *ex parte* rules in 11 CFR 111.22 and part 201. *See also* discussion of proposed 11 CFR 7.2(e), above. Proposed section 7.8 also contains nonsubstantive revisions from paragraphs (a), (c), and (d) of current section 7.15. Finally, proposed 11 CFR 7.8 would add references to 11 CFR 111.22, governing *ex parte* communications made in connection with Commission enforcement actions, and 11 CFR part 201, governing *ex parte* communications made in connection with public funding, audits, litigation, rulemakings, and advisory opinions. *See* proposed 11 CFR 7.8(e). The Commission seeks comment on these changes to its *ex parte* communication rules.

9. Proposed Removal of Current 11 CFR 7.11—Political and Organization Activity

The Hatch Act Reform Amendments of 1993 [18] lifted many of the restrictions imposed by the original Hatch Act on most Federal employees with regard to participation in political campaigns. However, Congress specifically addressed the FEC in the Hatch Act Amendments and left all of the original Hatch Act's restrictions in place for employees of the Commission, other than Commissioners. *See* 5 U.S.C. 7323(b)(1) and (2). In contrast to the Commissioners, Commission employees may not give a political contribution to a Member of Congress, an employee of the Executive Branch (other than the President or Vice President), or an officer of a uniformed service. 5 U.S.C. 7323(b)(1). Additionally, Commission employees may not "take an active part in political management or political campaigns." 5 U.S.C. 7323(b)(2)(A).

The Hatch Act, as amended, prohibits certain political activities by Commissioners such as (1) using official authority or influence to interfere with an election, (2) knowingly soliciting or discouraging political activity by anyone subject to a Commission audit or investigation, (3) soliciting or receiving political contributions (except in certain, narrowly limited circumstances), or (4) being a candidate for public office in a partisan election. 5 U.S.C. 7323(a).

OPM has authority to issue regulations regarding the Hatch Act Amendments, and the Office of Special Counsel ("OSC") interprets and enforces those regulations. *See* 5 U.S.C. 1103(a)(5) and 7325. No provisions in the Hatch Act Amendments empower any agencies other than OPM to issue regulations pursuant to the Hatch Act Amendments, and no provision in FECA directly refers to the Hatch Act Amendments or previous Hatch Act restrictions. OPM has issued a regulation expressly prescribing the extent to which the political activities of employees may be limited beyond the restrictions in the Hatch Act Amendments. This OPM regulation provides that: "No further proscriptions or restrictions may be imposed upon employees covered under this regulation except: (a) Employees who are appointed by the President by and with the advice and consent of the Senate; (b) Employees who are appointed by the President; (c) Non-career senior executive service members; (d) Schedule C employees, 5 CFR 213.3301, 213.3302; and (e) Any other employees who serve at the pleasure of the President." *See* 5 CFR 734.104.

The Commission has received an advisory opinion from OSC as to the scope of the Commission's authority to interpret the Hatch Act Amendments regarding Commissioners and Commission employees.[19] The specific question asked was whether the Commission may adopt a regulation that would forbid a Commissioner or a Commission employee from publicly supporting, or working for, or contributing to, a candidate, political party, or political committee subject to the jurisdiction of the Commission, even if in the case of public support, the activity is not done in concert with the

[17] Outside activities of all FEC employees are addressed in OGE's Standards of Ethical Conduct at 5 CFR 2635.801–2635.809, which, when the standards became effective in February 1993, superseded the Commission's current regulations at 11 CFR 7.9(b)–(f). Commissioners have additional limitations on outside activities as described in proposed 11 CFR 7.6 and 2 U.S.C. 437c(a)(3).

[18] Public Law 103–94, 107 Stat. 1001 (1993) ("Hatch Act Amendments").

[19] A copy of the Office of Special Counsel's opinion is available on the Commission's Web site at *http://www.fec.gov/law/law_rulemakings.shtml* under "Standards of Conduct."

candidate, political party, or political committee. In its opinion, the OSC noted the OPM regulations cited above and stated with respect to employees that "the FEC cannot further restrict the political activity of its regular employees by forbidding them from publicly supporting or contributing to a candidate, political party, or political committee subject to the jurisdiction of the Commission." U.S. Office of Special Counsel Advisory Opinion, OSC File No. AD–03–0095, at 2 (Aug. 29, 2003). The OSC opinion also noted with respect to Commissioners that "the FEC has no authority to adopt regulations that would forbid a Commissioner from publicly supporting, working for, or contributing to a candidate, political party, or political committee subject to the jurisdiction of the FEC." *Id.* at 2–3. Its final conclusion was that "the FEC may not adopt regulations that would limit the political activity of FEC employees or Commissioners beyond the restrictions set forth in the Hatch Act." [20] *Id.* at 3.

Accordingly, the Commission proposes to delete current section 7.11 because it is inconsistent with the Hatch Act Amendments.

10. Proposed Removal of Current 11 CFR 7.12—Membership in Associations

The Commission proposes to remove current 11 CFR 7.12, which addresses employee and Commissioner membership in associations. In 1991, OGE issued a Notice of Proposed Rulemaking that included proposed regulations concerning participation in professional associations. *See* Notice of Proposed Rulemaking on Standards of Ethical Conduct for Employees of the Executive Branch, 56 FR 33778 (July 23, 1991). OGE decided, however, to reserve action in its final rule on this topic as a result of the overwhelming response to its request for comments. *See* Explanation and Justification for Final Rule on Standards of Ethical Conduct for Employees of the Executive Branch, 57 FR 35006 (Aug. 7, 1992). The Commission agrees with the position taken by OGE in its rulemaking that ethical concerns regarding membership in nongovernmental associations or organizations may be addressed under the more general standards in 5 CFR part 2635. *See* 57 FR at 35035. Among those general provisions that are applicable are 5 CFR 2635.402 (concerning disqualifying financial interests), 5 CFR 2635.502 (concerning personal and business relationships), and 5 CFR 2635.704 and 2635.705 (concerning use of government property and official time).

11. Proposed Removal of Current 11 CFR Part 7, Subpart D (Post Employment Conflict of Interest: Procedure for Administrative Enforcement Proceedings)

Current 11 CFR part 7, subpart D, concerns administrative procedures to be followed for investigations of post-employment conflict-of-interest violations by individuals who have left Commission employment. Subpart D was based on a prior version of 18 U.S.C. 207 and 5 CFR parts 2637 and 2641. When subpart D was adopted, 18 U.S.C. 207(j) authorized agency proceedings against individuals who violated that section and required that "departments and agencies shall, in consultation with the Director of the Office of Government Ethics, establish procedures to carry out this subsection."

Subsequently, however, 18 U.S.C. 207(j) was amended and the section authorizing administrative procedures and the authority to draft regulations regarding the procedures was removed and replaced.[21] The Commission has no pending post-employment situations concerning employees who left service prior to the repeal of this provision. Accordingly, the Commission is proposing to remove 11 CFR part 7, subpart D pertaining to proceedings regarding post-employment conflicts of interest in its entirety. Please note that former employees would remain subject to Department of Justice criminal prosecution under 18 U.S.C. 207 for post-employment conflict of interest violations. *See* 18 U.S.C. 216.

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

Regulatory Flexibility Act

The Commission certifies that the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that this rulemaking affects only the appointed members of the Federal Election Commission and its employees. The members of the Commission and its employees are individuals, and are not small entities under 5 U.S.C. 601.

List of Subjects

5 CFR Part 4701

Conflict of interests, Government employees, Outside activities.

11 CFR Part 7

Administrative practice and procedure, Conflict of interests, Government employees, Political activities (government employees).

For the reasons set out in the preamble, the Federal Election Commission, with the concurrence of the Office of Government Ethics, proposes to amend title 5 of the Code of Federal Regulations, and the Federal Election Commission further proposes to amend chapter I of title 11 of the Code of Federal Regulations as follows:

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

1. Add Chapter XXXVII, consisting of part 4701, to read as follows:

Chapter XXXVII—Federal Election Commission

PART 4701—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE FEDERAL ELECTION COMMISSION

Sec.
4701.101 Scope.
4701.102 Prior approval for certain outside employment.

Authority: 2 U.S.C. 437c(a)(3); 5 U.S.C. 7301; 5 U.S.C. app. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR p. 215 (1989 Comp.), as modified by E.O. 12731, 55 FR 42547, 3 CFR p. 306 (1990 Comp.); 5 CFR 2635.105 and 2635.803.

§ 4701.101 Scope.

(a) In accordance with 5 CFR 2635.105, the regulations in this part set forth standards of conduct that apply to members and other employees of the Federal Election Commission ("Commission").

(b) In addition, members and other employees of the Commission are subject to the following regulations:

(1) 5 CFR part 735 (Employee Responsibilities and Conduct);

(2) 5 CFR part 2634 (Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture);

(3) 5 CFR part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch); and

(4) 11 CFR part 7 (Standards of Conduct for Members and Employees of the Federal Election Commission).

§ 4701.102 Prior approval for certain outside employment.

(a) *Definitions.* For purposes of this section:

[20] Under 5 U.S.C. 1212, the advisory opinion authority of the OSC is limited to matters related to the Hatch Act. Therefore, the conclusions of the opinion are also limited to interpretations of the Hatch Act and OPM regulations. They do not apply to any separate statutory authority under FECA.

[21] *See* Public Law 101–189, Div. A, Title VIII, Part B, sec. 814(d)(2), 103 Stat. 1352, 1499 (1989).

(1) *Active participant* has the meaning set forth in 5 CFR 2635.502(b)(1)(v).

(2) *Employee* has the meaning set forth in 5 CFR 2635.102(h).

(3) Definition of *outside employment.* For purposes of this section, *outside employment* means any form of non-Federal employment, business relationship or activity involving the provision of personal services, whether or not for compensation. It includes, but is not limited to, services as an officer, director, agent, advisor, attorney, consultant, contractor, general partner, trustee, teacher, speaker, writer, or any other services provided by an individual. It includes writing when done under an arrangement with another person for production or publication of the written product. The definition does not include participation in the activities of a nonprofit charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organization, unless:

(i) The activity provides compensation other than reimbursement of expenses;

(ii) The activities of the non-Federal organization are devoted substantially to matters relating to the employee's official duties as defined in 5 CFR 2635.807(a)(2)(i)(B)–(E) and the employee will serve as officer or director of the non-Federal organization; or

(iii) The activities will involve the provision of consultative or professional services. Consultative services means the provision of personal services, including the rendering of advice or consultation, which requires advanced knowledge in a field of science or learning customarily acquired by a course of specialized instruction and study in an institution of higher education, hospital, or similar facility. Professional services means the provision of personal services, including the rendering of advice or consultation, which involves application of the skills of a profession as defined in 5 CFR 2636.305(b)(1) or involves a fiduciary relationship as defined in 5 CFR 2636.305(b)(2).

(4) *Related to the employee's official duties* means that the outside employment meets one or more of the tests described in 5 CFR 2635.807(a)(2)(i)(B)–(E). Outside employment related to the employee's official duties includes:

(i) Outside employment that an employee has been invited to participate in because of his or her official position rather than his or her expertise in the subject matter;

(ii) Outside employment in which an employee has been asked to participate by a person that has interests that may be substantially affected by the performance or nonperformance of the employee's official duties;

(iii) Outside employment that conveys information derived from nonpublic information gained during the course of government employment; and

(iv) Outside employment that deals in significant part with any matter to which the employee is or has been officially assigned in the last year, or any ongoing or announced Commission policy, program, or operation.

(b) *Prior approval requirement.* An employee of the Commission, including a member of a Commissioner's staff, but not a member of the Commission or a special Government employee, shall obtain written approval from the Designated Agency Ethics Official before engaging in outside employment where the services provided:

(1) Are related to the employee's official duties; or

(2) Involve the application of the same specialized skills or the same educational background as used in the performance of the employee's official duties.

(c) *Submission of requests for approval.* (1) The request for approval shall be sent through all of the employee's supervisors and shall state the name of the person, group, or organization for whom the outside employment is to be performed; the type of outside employment to be performed; and the proposed hours of, and approximate dates of, the outside employment.

(2) Upon a significant change in the nature or scope of the outside employment or in the employee's official position, the employee shall submit a revised request for approval.

(d) *Standard for approval.* Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

TITLE 11—FEDERAL ELECTIONS

Chapter I—Federal Election Commission

2. Revise part 7 to read as follows:

PART 7—STANDARDS OF CONDUCT

Sec.

7.1 Scope.
7.2 Definitions.
7.3 Interpretation and advisory service.
7.4 Reporting suspected violations.
7.5 Corrective action.
7.6 Outside employment and activities by Commissioners.
7.7 Prohibition against making complaints and investigations public.
7.8 Ex parte communications in enforcement actions.

Authority: 2 U.S.C. 437c, 437d, and 438; 5 U.S.C. 7321 *et seq.* and app. 3.

§ 7.1 Scope.

(a) The regulations in this part apply to members and employees of the Federal Election Commission ("Commission").

(b) In addition, members and employees of the Commission are subject to the following regulations:

(1) 5 CFR part 735 (Employee Responsibilities and Conduct);

(2) 5 CFR part 2634 (Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture);

(3) 5 CFR part 2635 (Standards of Ethical Conduct for Employees of the Executive Branch); and

(4) 5 CFR part 4701 (Supplemental Standards of Ethical Conduct for Employees of the Federal Election Commission).

§ 7.2 Definitions.

As used in this part:

(a) *Commission* means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(b) *Commissioner* means a member of the Federal Election Commission, in accordance with 2 U.S.C. 437c.

(c) *Designated Agency Ethics Official* means the employee designated by the Commission to administer the provisions of the Ethics in Government Act of 1978 (5 U.S.C. appendix), as amended, and includes a designee of the Designated Agency Ethics Official. The General Counsel serves as the Commission's Designated Agency Ethics Official.

(d) *Employee* means an employee of the Federal Election Commission and includes a special Government employee as defined in 18 U.S.C. 202(a).

(e) *Ex parte communication* means any written or oral communication by any person outside the agency to any Commissioner or any member of any Commissioner's staff, but not to any other Commission employee, that imparts information or argument regarding prospective Commission action or potential action concerning any pending enforcement matter.

(f) *Inspector General* means the individual appointed by the Commission to administer the provisions of the Inspector General Act of 1978, as amended (5 U.S.C. appendix), and includes any designee of the Inspector General.

§ 7.3 Interpretation and advisory service.

(a) A Commissioner or employee seeking advice and guidance on matters covered by this part or 5 CFR parts 735, 2634, 2635, 2640, or 4701 may consult with the Designated Agency Ethics Official. The Designated Agency Ethics Official should be consulted before undertaking any action that might violate this part or 5 CFR parts 735, 2634, 2635, 2640, or 4701 governing the conduct of Commissioners or employees.

(b) The Designated Agency Ethics Official, a Commissioner, or an employee may request an opinion from the Director of the Office of Government Ethics regarding an interpretation of 5 CFR parts 2634, 2635, or 2640.

§ 7.4 Reporting suspected violations.

Commissioners and employees shall disclose immediately any suspected violation of a statute or of a rule set forth in this part or of a rule set forth in 5 CFR parts 735, 2634, 2635, 2640, or 4701 to the Designated Agency Ethics Official, the Office of Inspector General, or other appropriate law enforcement authorities.

§ 7.5 Corrective action.

A violation of this part or 5 CFR parts 735, 2634, 2635, 2640, or 4701 by an employee may be cause for appropriate corrective, disciplinary, or adverse action in addition to any penalty prescribed by law.

§ 7.6 Outside employment and activities by Commissioners.

No member of the Commission may devote a substantial portion of his or her time to any other business, vocation, or employment. Any individual who is engaging substantially in any other business, vocation, or employment at the time such individual begins to serve as a member of the Commission will appropriately limit such activity no later than 90 days after beginning to serve as such a member.

§ 7.7 Prohibition against making complaints and investigations public.

(a) Commission employees are warned that they are subject to criminal penalties if they discuss or otherwise make public any matters pertaining to a complaint or investigation under 2 U.S.C. 437g, without the written permission of the person complained against or being investigated. Such communications are prohibited by 2 U.S.C. 437g(a)(12)(A).

(b) Section 437g(a)(12)(B) of title 2 of the United States Code provides as follows: "Any member or employee of the Commission, or any other person, who violates the provisions of [2 U.S.C. 437g(a)(12)(A)] shall be fined not more than $2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions of [2 U.S.C. 437g(a)(12)(A)] shall be fined not more than $5,000."

§ 7.8 Ex parte communications in enforcement actions.

In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to 2 U.S.C. 437g:

(a) Except to the extent required for the disposition of enforcement matters as required by law (as, for example, during the normal course of an investigation or a conciliation effort), no Commissioner or member of any Commissioner's staff shall make or entertain any *ex parte* communications.

(b) The prohibition of this section shall apply from the time a proper complaint is filed with the Commission pursuant to 2 U.S.C. 437g(a)(1) or from the time that the Commission determines on the basis of information ascertained in the normal course of its supervisory responsibilities that it has reason to believe that a violation has occurred or may occur pursuant to 2 U.S.C. 437g(a)(2), and shall remain in force until the Commission has concluded all action with respect to the enforcement matter in question.

(c) Any written communication prohibited by paragraph (a) of this section shall be delivered to the General Counsel, who shall place the communication in the case file.

(d) A Commissioner or member of any Commissioner's staff involved in handling enforcement actions who receives an offer to make an oral communication or any communication concerning any enforcement action pending before the Commission as described in paragraph (a) of this section, shall decline to listen to such communication. If unsuccessful in preventing the communication, the Commissioner or employee shall advise the person making the communication that he or she will not consider the communication and shall prepare a statement setting forth the substance and circumstances of the communication. Within 48 hours of receipt of the communication, the Commissioner or any member of any Commissioner's staff shall prepare a statement setting forth the substance and circumstances of the communication and shall deliver the statement to the General Counsel for placing in the file in the manner set forth in paragraph (c) of this section.

(e) Additional rules governing *ex parte* communications made in connection with Commission enforcement actions are found at 11 CFR 111.22. Rules governing *ex parte* communications made in connection with public funding, Commission audits, litigation, rulemakings, and advisory opinions are found at 11 CFR part 201.

Dated: May 11, 2010.

On behalf of the Commission.

Matthew S. Petersen,

Chairman, Federal Election Commission.

Approved: May 7, 2010.

Robert I. Cusick,

Director, Office of Government Ethics.

[FR Doc. 2010–11599 Filed 5–14–10; 8:45 am]

BILLING CODE 6715–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AI75

[NRC–2009–0538]

List of Approved Spent Fuel Storage Casks: NUHOMS® HD System Revision 1; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on May 7, 2010 (75 FR 25120), that proposes to amend the regulations that govern storage of spent nuclear fuel. Specifically, this proposed amendment would be to the list of approved spent fuel storage casks to add revision 1 to the NUHOMS HD spent fuel storage cask system. This action is necessary to correctly specify the date by which comments must be received, because the notice of direct final rulemaking (75 FR 24786; May 6, 2010), and the companion notice of proposed rulemaking were published in the **Federal Register** on different dates instead of being published concurrently on the same date, as erroneously stated in the notices.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov.*

SUPPLEMENTARY INFORMATION: On page 25120, in the third column, the fifth full

paragraph is corrected to read as follows: For additional information, see the Direct Final Rule published in the Rules and Regulations section of the **Federal Register** on May 6, 2010 (75 FR 24786). Also, on page 25121, in the first column, the eighth full paragraph is corrected to read as follows: For additional procedural information and the regulatory analysis, see the direct final rule published in the Rules and Regulations section of the **Federal Register** on May 6, 2010 (75 FR 24786).

Dated at Rockville, Maryland, this 10th day of May 2010.

For the Nuclear Regulatory Commission.

Helen Chang,

Acting Chief, Rules, Announcements and Directives Branch Division of Administrative Services, Office of Administration.

[FR Doc. 2010–11562 Filed 5–14–10; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AD59

Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed rulemaking.

SUMMARY: The FDIC is seeking comment on a proposed rule that would require certain identified insured depository institutions ("IDIs") that are subsidiaries of large and complex financial parent companies to submit to the FDIC analysis, information, and contingent resolution plans that address and demonstrate the IDI's ability to be separated from its parent structure, and to be wound down or resolved in an orderly fashion. The IDI's plan would include a gap analysis that would identify impediments to the orderly stand-alone resolution of the IDI, and identify reasonable steps that are or will be taken to eliminate or mitigate such impediments. The contingent resolution plan, gap analysis, and mitigation efforts are intended to enable the FDIC to develop a reasonable strategy, plan or options for the orderly resolution of the institution. The proposal would apply only to IDIs with greater than $10 billion in total assets that are owned or controlled by parent companies with more than $100 billion in total assets.

DATES: Comments must be submitted on or before July 16, 2010.

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

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include "Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions" in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery/Courier:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (EST).
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided. Comments may be inspected and photocopied in the FDIC Public Information Center, 3501 North Fairfax Drive, Room E–1002, Arlington, VA 22226, between 9 a.m. and 5 p.m. (EST) on business days. Paper copies of public comments may be ordered from the Public Information Center by telephone at (877) 275–3342 or (703) 562–2200.

FOR FURTHER INFORMATION CONTACT: Keith Ligon, Chief, Exam Support Section, Division of Supervision and Consumer Protection, (202) 898–3686, or James Marino, Project Manager, Division of Resolutions and Receiverships, (202) 898–7151, or Shane Kiernan, Senior Attorney, Legal Division, (703) 562–2632, or Mark Flanigan, Counsel, Legal Division, (202) 898–7426, or John Dorsey, Counsel, Legal Division, (202) 898–3807, or Richard A. Bogue, Counsel, Legal Division, (202) 898–3726, or Carl J. Gold, Counsel, Legal Division, (202) 898–8702.

SUPPLEMENTARY INFORMATION:

I. Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions

(A) Authority for Proposed Regulation

The FDIC is charged by Congress with the critical responsibility of insuring the deposits of banks and thrifts in the United States, and with serving as receiver of all such institutions if they should fail. As of December 31, 2009, the FDIC insured approximately $4.75 trillion in deposits in more than 8,000 depository institutions. In implementing the deposit insurance program, and in efficiently and effectively resolving failed depository institutions, the FDIC strengthens the stability of the banking system and helps maintain public confidence in the banking industry in the United States. In its efforts to achieve this objective and to implement its insurance and resolution functions, the FDIC requires a comprehensive understanding of the organization, operation and business practices of banks and thrifts in the United States, with particular attention to the nation's largest and most complex insured depository institutions that account for nearly half of the FDIC's insurance risk.

To carry out these core responsibilities, the proposed regulation requires a limited number of the largest insured depository institutions to provide the FDIC with essential information concerning their structure, operations, business practices and financial responsibilities and exposures. The proposed regulation requires these institutions to develop and submit detailed plans demonstrating how such depository institutions could be separated from their affiliate structure and wound down in an orderly and timely manner in the event of receivership. The proposed regulation would also make a critically important contribution to the FDIC's implementation of its statutory receivership responsibilities by providing the FDIC as receiver with the information it needs to make orderly and cost effective resolutions much more feasible.

The Federal Deposit Insurance Act gives the FDIC broad authority to carry out its statutory responsibilities, and to obtain the information required by the proposed regulation. The authority to issue the proposed regulation is provided by Section 9(a) Tenth of the FDI Act, 12 U.S.C. section 1819(a) Tenth, authorizing the FDIC to prescribe, by its Board of Directors, such rules and regulations as it may deem necessary to carry out the provisions of the FDI Act or of any other law that the FDIC is responsible for administering or enforcing. The FDIC also has authority to adopt regulations governing the operations of its receiverships pursuant to Section 11(d)(1) of the FDI Act. 12 U.S.C. section 1821(d)(1). Collection of the information required by the regulation is also supported by the FDIC's broad authority to conduct examinations of depository institutions to determine the condition of the IDI, including special examinations, 12 U.S.C. section 1820(b)(3).

Finally, a failure of an IDI to provide the information required by this regulation would constitute a regulatory violation that would allow the FDIC to initiate the process of deposit insurance termination (12 U.S.C. section 1818(a)(2)), or to use backup enforcement authority of the FDIC under 12 U.S.C. section 1818(t). This backup enforcement authority allows the FDIC, after notice to the primary Federal regulator, to pursue FDI Act section 8 enforcement actions, including cease-and-desist orders, civil money penalties, and removal and prohibition actions.

(B) Background

Over the past decades, the size and complexity of insured depository institutions ("IDIs") have evolved dramatically. More recently, and as a result of the financial crisis, the industry has seen further consolidation and continued expansion in the scope of insured depository institutions' activities, operations, and risks. As a result of continued consolidation of the U.S. banking industry, the FDIC's insurance risk is now concentrated in the largest and most complex insured depository institutions. Today, almost half of the FDIC's deposit insurance exposure is accounted for by fewer than 40 large institutions that exist within even larger conglomerate and multinational structures.

These large and complex IDIs present profound challenges to the FDIC both as insurer and when it must act in its receivership capacity. The complexity of these IDIs, the extensive financial interrelationships within the conglomerates, and the likely presence of competing statutory regimes that may apply to the IDI, its parent corporation and key affiliates, result in opaque structures that prevent the FDIC from gaining access to information that is essential to the FDIC's assessment of its risks as insurer and to its ability to resolve the IDI in a cost-effective and timely fashion as receiver, in the event of failure. Also, given the extensive interconnectedness of the IDI with its parent and affiliates, the FDIC can be significantly hindered in its mission to effect an orderly and timely resolution, minimize cost to the insurance fund, and to maximize recoveries to depositors and other claimants. This mission is separate and distinct from the mission of the primary Federal supervisor. Complementing the supervisory oversight of the primary Federal regulator, the FDIC's role as insurer and resolver requires a distinct focus on loss severities, default risks, complexities in structure and operations, and other factors that impact risk to the fund and the ability of the FDIC to effect an orderly resolution.

The proposed rule is intended to ensure that the FDIC has access to all the information it needs to assess its insurance risk in connection with large IDIs existing within such structures, and to efficiently resolve such IDIs in the event of failure. The rule requires identified IDIs to compile information, conduct analyses and develop plans that will enable the FDIC to understand and anticipate the operational, managerial, financial and other aspects of the IDI that would complicate efforts by the FDIC, as receiver, to extract the IDI from the larger enterprise, determine and maximize franchise value, and conduct a least-cost transaction.

Organizational and operational complexity of the largest IDIs results in opaque structures. The very largest IDIs reside within bank, thrift and financial holding company structures that include an extensive network of affiliated companies offering both banking and non-banking products and services. Management and operation of these complex entities is typically organized along business lines rather than by legal entity. Key decisions affecting the IDI, and key services or functions relating to the IDI, are often made outside the IDI, by parent holding companies or affiliates of the IDI. Complex financial and other interrelationships within such groups (for example, guaranties, derivatives trades, contractual commitments, service agreements, information technology agreements, staffing allocations, human resource and related administrative support ties) create further interdependencies that can significantly impact resolution strategy and the conduct of an orderly and timely resolution. IDIs often rely upon affiliates for the provision of critical operations and services without which the IDI cannot continue to smoothly function, which in a resolution context threatens its franchise value and the FDIC's ability to conduct an effective resolution.

Further complications result from the presence of distinct statutory insolvency regimes specific to the various legal entities within the conglomerate, which often have different, and sometimes competing, goals. Insured banks and thrifts are subject to the FDI Act and are resolved by the FDIC. The insolvency of bank, thrift and financial holding companies and most of their non-insured financial subsidiaries are subject to the Bankruptcy Code.[1] These competing regimes result in disputes over assets, intra-affiliate claims and litigation, and can increase the cost of the resolution and impair its efficiency.

The FDIC has determined that there is a compelling need for better information and planning to separately resolve the insured depository institution as a distinct entity. For example, in certain receiverships, staff and human resources have been provided by the parent organization, impeding the receiver's ability to effect a smooth and orderly transition of services to the community. Critical information technology support services are frequently conducted outside the insured entity, forcing the receiver to seek continuity of such key services. The FDIC has witnessed the inability of large and complex insured depository institutions to identify the location and legal owner of assets, to separate liquidity needs and funding sources of the insured entity, and even to identify a separate line management team to conduct operations during a resolution. The FDIC, moreover, has been routinely engaged in disputes over assets, lien claims, and related litigation with parents and affiliates, draining receivership resources, extending the duration of the receivership and delaying the prompt resolution of claims.

The proposed rule is consistent with and will assist in the implementation of "*Resolution Plan*" *legislation pending in both houses of Congress.* Pending reform legislation now in both houses of Congress requires wind-down and resolution plans to be submitted by identified large bank holding companies or non-bank financial companies, pursuant to regulations to be adopted jointly by the FDIC and the Board of Governors of the Federal Reserve System ("FRB"). This important Congressional initiative is fully consistent with the conclusion by the FDIC, based on its experience in the current financial crisis as receiver

[1] The recent financial crisis, for example, saw the collapse of several major financial services holding companies whose primary business activities were not housed in an insured depository institution. These institutions included Bear Stearns, Lehman Brothers and American International Group (AIG). Each of these financial holding companies was subject to the jurisdiction of the bankruptcy courts. Broker-dealer subsidiaries of parent holding companies that are members of the Securities Investor Protection Corporation (SIPC) are subject to a combination of the Securities Investor Protection Act (SIPA) and the Bankruptcy Code. Further, the rehabilitation, restructuring or liquidation of insurance company subsidiaries is governed by unique State insurance insolvency codes, which differ from State to State, and often also may lead to State judicial proceedings.

charged with responsibility for resolving failed banks (especially large and complex IDIs), that comprehensive wind-down plans for large and complex IDIs are essential for their orderly and least-cost resolution. It is for that reason that the FDIC is proposing that the process of developing plans for such IDIs should begin promptly. This initiation of that process by FDIC under the authority of the FDI Act will in no way conflict with the mandate of the FDIC and the FRB under the pending legislation to establish rules and administer a system of resolution planning for large bank holding companies and non-bank financial companies. Indeed, the joint planning process to be conducted by the FDIC and the FRB involving companies that include large or complex IDIs will be able to integrate earlier resolution planning that will take place under the FDIC proposed contingent resolution program, and such planning should be able to continue as a part of any proposal adopted by Congress. The FDIC, in implementing this proposal, will make every effort to coordinate its work with the separate joint planning process of the FDIC and the Federal Reserve to avoid duplication of effort.

The proposed rule similarly supports and complements related international initiatives. At the 2009 Pittsburgh Summit, and in response to the recent financial crisis, the G20 Leaders called on the Financial Stability Board (FSB) to propose by the end of October 2010, possible measures to address the "too big to fail" and moral hazard concerns associated with systemically important financial institutions. Specifically, the G20 Leaders called for the development of "internationally-consistent firm-specific contingency and resolution plans" by the end of 2010. The FSB is pursuing further work to develop the international standards for contingency and resolution plans and to evaluate how to improve the capacity of national authorities to implement orderly resolutions of large and interconnected financial firms.

The FSB's program has built on work undertaken by the Basel Committee on Banking Supervision's Cross-border Bank Resolution Group, co-chaired by the FDIC, since 2007. In its final *Report and Recommendations of the Cross-border Bank Resolution Group,* issued on March 18, 2010, the Basel Committee emphasized the importance of pre-planning and the development of practical and credible plans to promote resiliency in periods of severe financial distress and to facilitate a rapid resolution should that be necessary. In its review of the financial crisis, the Report found that one of the main lessons was that the complexity and interconnectedness of large financial conglomerates of corporate structure made crisis management and resolutions more difficult and unpredictable.

Similarly, the FSB's Principles for Cross-Border Cooperation on Crisis Management commit national authorities to ensure that firms develop adequate contingency plans and highlight that information needs are paramount, including information regarding group structure, and legal, financial and operational intra-group dependencies; the interlinkages between the firm and financial system (*e.g.,* in markets and infrastructures) in each jurisdiction in which it operates; and potential impediments to a coordinated solution stemming from the legal frameworks and bank resolution procedures of the countries in which the firm operates. The FSB Crisis Management Working Group has recommended that supervisors ensure that firms are capable of supplying in a timely fashion the information that may be required by the authorities in managing a financial crisis. The FSB recommendations strongly encourage firms to maintain contingency plans and procedures for use in a wind-down situation (*e.g.,* factsheets that could easily be used by insolvency practitioners), and to regularly review them to ensure that they remain accurate and adequate. This proposed rule enhances and complements these international efforts.

Conclusion. The FDIC believes that assessing its insurance risk and planning for resolution of covered IDIs require access to timely, complete and accurate information regarding the nature and structure of the IDI within the organization as well as its ability to extract and separate itself from its parent structure in contemplation of failure. These information and contingency planning requirements are the foundation for any meaningful analysis of IDI franchise value, least-cost resolution strategies, strategies to mitigate systemic risks and overall planning for an orderly resolution in the possible event of failure. The recent financial crisis has demonstrated that the risk of insolvency to an IDI can arise quickly, and that preparedness and planning must be conducted on a continuing basis, before problems become evident, and not merely in response to after-the-fact supervisory indicators.

The Notice of Proposed Rulemaking

The Notice of Proposed Rulemaking ("NPR") sets forth information reporting requirements intended provide the FDIC with key information concerning the operations, management, financial, affiliate relationships and other aspects of IDIs operating within a complex conglomerate to permit the FDIC to more effectively carry out its duties as insurer and receiver. The NPR requires IDIs within the scope of the rule to prepare, and submit to the FDIC, a contingent resolution plan describing the means by which the IDI could be effectively separated from the rest of the conglomerate enterprise in the event of failure of the IDI or the bankruptcy of the parent company or any key affiliate of the IDI. It is intended that such a plan also will assist the FDIC, in the event of the failure of the IDI, in carrying out its responsibilities to resolve the failed institution in timely and cost-effective fashion. The rule proposes that the contingent resolution plan be submitted within 6 months of the effective date of the rule. The FDIC will review the plan in consultation with appropriate primary Federal regulator(s) and the institution to ensure the plan is effective, workable and satisfactory. The plan should be updated annually, and material information elements should be updated more frequently as reasonable and necessary, given the risk profile and structure of the institution relative to its affiliates and to demonstrate the capacity to provide specific information when needed (*e.g.,* deposit flows, intra-group funding flows, short-term funding, derivatives transactions, or material changes to capital structure or sources). While much more information will be required to prepare for and implement an actual resolution, the information required under the proposed regulation focuses on key structures, exposures, and interlinkages necessary to evaluate and further develop the contingent resolution plan.

The NPR is intended to reach large, complex insured depository institutions. Accordingly under the NPR, a "covered insured depository institution" ("covered IDI") is defined as insured depository institutions with greater than $10 billion in total assets that are owned or controlled by parent companies with more than $100 billion in total assets. As of the fourth quarter of 2009, there were 40 such institutions, representing total assets of $8.3 trillion. These 40 institutions hold approximately 47.9% of all deposits insured by the FDIC.

Nature and Scope of Contingent Resolution Plan To Be Provided to the FDIC

The FDIC is proposing that each covered IDI develop and provide to the FDIC a credible contingent resolution plan which sets forth detailed information needed to allow the FDIC to understand the scope and extent of the IDI's business lines, operations, risks and activities, and especially to determine the nature and extent of interrelationships between the IDI and its affiliates; to identify and quantify non-obvious risks embedded within distinct business entities or units; to identify concentrations of risk and correlations among risks; and to develop an enterprise-wide and entity-specific vision of the covered IDI.

Some of the required information is likely already to have been developed and/or reported elsewhere, and to the greatest extent possible, the FDIC expects to use such existing information and reports to minimize the regulatory burden on the covered IDIs. The FDIC recognizes that the information and analysis provided will be proprietary and highly confidential, and is not intended for disclosure.

In addition to providing information, the contingent resolution plan should provide an analysis of the covered IDI's ability to be resolved in an orderly fashion in the event of its receivership, or the insolvency of the parent or key affiliates. The analysis should reveal the covered IDI's planning and gap analysis of its ability to separate the covered IDI from the conglomerate structure in the most cost-effective and timely fashion. The analysis and plan should reveal all material obstacles to an orderly resolution of the covered IDI and interconnections and interdependencies that would hinder the timely and effective resolution of the insured entity, and set forth specific, credible remediation steps or mitigating responses that would be required to eliminate or minimize such obstacles.

In developing an analysis and plan, a covered IDI should consider the institution's size relative to its parent company structure; its interdependence with the national and international marketplaces; as well as how easily its financial company products or services can be substituted.

Standards for Content of Contingent Resolution Plan

The following set forth the minimum standards for the contingent resolution plan to be provided by covered IDIs:

- Provide sufficient information, covering material risks, business lines, operations, activities and exposures of the covered IDI and its subsidiaries necessary to permit development of an effective contingent resolution plan.
- Set forth the institution's analysis that identifies material impediments to an orderly resolution of the covered IDI in the event of its insolvency, the insolvency of its parent or critical affiliates, and describing the steps that are or will be taken to eliminate or mitigate such impediments.
- Provide sufficient information to the FDIC to allow the FDIC to isolate the IDI and to allow for effective resolution strategy development and contingency planning for a period of severe financial distress, describing means of preserving franchise value, maximizing recovery to creditors, and minimizing systemic impacts on the financial system.
- Provide a gap analysis tailored to the size, complexity and risk profile of the institution, provide remediation steps that are feasible and capable of execution within a reasonable time frame and set forth a time period within which remediation actions are to be concluded.
- The contingent resolution plan must be approved by the institution's Board of Directors or designated executive committee.
- The contingent resolution plan must be updated on a regular, at least annual, basis, and demonstrate an ability to provide current and updated information on material elements as described in the regulation.

Minimum Components of the Required Contingent Resolution Plan

The proposed rule prescribes the elements of a contingent resolution plan intended to provide a complete review of the covered IDI and its relationships with its parent and affiliates, and key counterparties, to enhance preparedness for resolution. At a minimum the contingent resolution plan should include the following elements:

Summary of Analysis and Contingent Resolution Plan. Summarize material impediments to an orderly resolution of the covered IDI separate from its parent company and affiliates and a description of specific, credible remedial or mitigating steps that are or would be taken to eliminate or minimize such impediments. For example, reliance upon affiliates to provide critical services can establish an impediment to transferring its assets, liabilities and operations to an acquiring institution or bridge bank. This gap may be remediated by the development of continuity provisions in relevant contracts or by establishing pre-arranged substitution for such services.

Describe key assumptions underlying the analysis. Define short and long-term goals to remediate or mitigate identified impediments to separation and resolution.

Organizational Structure. Includes the IDI's, parent company's, and affiliates' legal and functional structures and identity of key personnel tasked with managing major components within the organization materially affecting the covered IDI.

Business Activities, Relationships and Counterparty Exposures. Identify and describe the business activities of the covered IDI and its subsidiaries, including an explanation of material interrelationships among the entities in the organizational structure, *e.g.* major counterparties (especially for financial contracts) and affiliates that provide key services and support. Critical services that are provided by affiliates, such as servicing, information technology support and operations, human resources or personnel should be identified. This description should also provide an assessment of each key entity's ability to function on a stand-alone basis.

Capital Structure. Detail the covered IDI's capital structure, as well as that of its parent, each subsidiary and key affiliates. Provide complete financial information in the form of audited financial statements presented along with line-item descriptions of the assets, liabilities, and equity comprising the balance sheets of the parent company as a consolidated entity as well as of each subsidiary or affiliated entity. Describe corporate financing arrangements for the institution, its subsidiaries, parent and key affiliates. Identify funding, liquidity, and refinancing risks associated with the various capital pools being utilized.

Intra-Group Funding, Transactions, Accounts, Exposures and Concentrations. Relative to the IDI, describe intra-group funding relationships, accounts, and exposures, including terms, purpose, and duration. These would include, for example, a description of intra-group financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, asset accounts, deposits or derivatives transactions. Clearly identify the nature and extent to which the IDI's parent or affiliates are to serve as a source of funding to the IDI, the terms of any contractual arrangements, the location of related assets, funds or deposits and the mechanisms by which funds can be down-streamed from the parent to the IDI.

Systemically Important Functions. Describe systemically important

functions that the covered IDI, its subsidiaries and affiliates provide, including the nature and extent of the institution's involvement in payment systems, custodial or clearing operations, large sweep programs and capital markets operations in which it plays a dominant role. Identify critical vulnerabilities, estimated exposure and potential losses, and why certain attributes of the businesses detailed in previous sections could pose a systemic risk to the broader economy.

Material Events. Describe events, *e.g.,* acquisitions, sales, litigation, operational and fiscal challenges, that have had a material effect on the IDI and its relationship with its parent or affiliates.

Cross-Border Elements. Discuss the nature and extent of the IDI's cross-border interrelationships and exposures; describe individual components of the group structure that are based or located outside the United States, including foreign branches, subsidiaries and offices. Provide detail on the location and amount of foreign deposits and assets. This information is necessary to facilitate the FDIC's determination of the legal and policy framework under which such assets might be resolved in the event of insolvency, including the framework for providing liquidity, the terms and restrictions of government support, and the operational and technical challenges of international payment systems.[2]

Any other material factor that may impede the orderly resolution of the covered IDI separately from its parent and affiliates.

Time frame for remediation. The plan should identify a time frame within which identified remediation efforts shall be achieved.

Approval. The covered IDI's board of directors or designated executive committee must approve the analysis and plan and attest that the plan is accurate and the information is current.

No contingency resolution plan provided pursuant to this rule shall be binding on the FDIC as receiver for a covered IDI.

II. Request for Comments

The FDIC realizes that the proposed requirements for covered IDIs could not be implemented without some regulatory and financial burden on the industry. The FDIC is seeking to minimize the burden while carrying out its mandates as insurer and as receiver. The FDIC seeks comments on all aspects of the proposed rule. The FDIC seeks comment on the potential industry costs and feasibility of implementing the requirements of the proposed rule. The FDIC also is interested in comments on whether there are other ways to accomplish its goals, or other information that will further the objectives of this rulemaking.

III. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) ("PRA"), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The estimated burden for the reporting and disclosure requirements, as set forth in the Notice of Proposed Rulemaking, is as follows:

Title: Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions.

OMB Number: 3064—New Collection.

Affected Public: Insured depository institutions with greater than $10 billion in total assets that are owned or controlled by a parent company with more than $100 billion in total assets ("covered IDIs").

A. *Estimated Number of Respondents for Initial Analysis, Information and Contingent Resolution Plan:* 40.

Frequency of Response: Once.

Estimated Time per Response: 500 hours per respondent.

Estimated Total Initial Burden: 20,000 hours.

B. *Estimated Number of Respondents for Annual Update on Analysis, Information and Contingent Resolution Plan:* 40.

Frequency of Response: Annual.

Estimated Time per Response: 250 hours per respondent.

Estimated Total Burden: 10,000 hours.

C. *Estimated Number of Respondents for Update on Certain Material Information Elements of Resolution Plan:* 40.

Frequency of Response: Zero to two times annually.

Estimated Time per Response: 0 to 250 hours per respondent.

Estimated Total Burden: 0 to 20,000 hours.

Background/General Description of Collection: Section 360.10 contains collections of information pursuant to the PRA. In particular, the following requirements of this proposed rule constitute collections of information as defined by the PRA: All covered IDIs are required to submit to the FDIC a contingent resolution plan that contains certain required information and meets certain described standards within six months of the effective date of the proposed rule; updates to the analysis and plan are required to be submitted annually, with certain material information elements required to be updated more frequently as reasonable and necessary. The collections of information contained in this proposed rule are being submitted to OMB for review.

Comments: In addition to the questions raised elsewhere in this Preamble, comment is solicited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and (5) estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Addresses: Interested parties are invited to submit written comments to the FDIC concerning the PRA implications of this proposal. Such comments should refer to "Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions." Comments may be submitted by any of the following methods:

- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: comments@FDIC.gov.* Include "Special Reporting, Analysis and Contingent Resolution Plans at Certain Large Insured Depository Institutions" in the subject line of the message.
- *Mail:* Gary A. Kuiper (202.898.3877), Counsel, Attention: Comments, FDIC, 550 17th St., NW., Room F–1072, Washington, DC 20429.
- *Hand Delivery/Courier:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (EST).

[2] The challenges related to cross-border resolutions, the nature and extent of planning, and relevant information needs are detailed in the Report and Recommendations of the Cross-border Bank Resolution Group, Basel Committee on Banking Supervision (March 2010); *see especially* Recommendation 6: "Planning in advance for orderly resolution".

• A copy of the comments may also be submitted to the OMB desk officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal* including any personal information provided.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA") requires an agency publishing a notice of proposed rulemaking to prepare and make available for public comment an initial regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). Pursuant to regulations issued by the Small Business Administration (13 CFR 121.201), a "small entity" includes a bank holding company, commercial bank, or savings association with assets of $165 million or less (collectively, small banking organizations). The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b).

Pursuant to section 605(b) of the RFA (5 U.S.C. 605(b)), the FDIC certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would require the largest insured depository institutions to submit and periodically update a contingent resolution plan. The proposed rule would apply only to *covered IDIs*—defined in the proposed rule as insured depository institutions with greater than $10 billion in total assets that are owned or controlled by parent companies with more than $100 billion in total assets. There are no small banking organizations that would come within the definition of *covered IDIs.*

List of Subjects in 12 CFR Part 360:

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and recordkeeping requirements, Savings associations, Securitizations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend Part 360 of title 12 of the Code of Federal Regulations as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1817(b), 1818(a)(2), 1818(t), 1819(a) Seventh, Ninth and Tenth, 1820(b)(3), (4), 1821(d)(1), 1821(d)(10)(c), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L 101–73, 103 Stat. 357.

2. Add new § 360.10 to read as follows:

§ 360.10. Special reporting, analysis and contingent resolution plans at certain large insured depository institutions.

(a) *Purpose and scope.* This section is intended to ensure that the FDIC has the information necessary to facilitate the orderly resolution by the FDIC of a large insured depository institution (defined as a "Covered Insured Depository Institution" or "CIDI"), upon its failure, on a stand-alone basis, when the CIDI is part of a complex financial organization that includes a corporate parent and, in most cases, affiliates that are not depository institutions insured by the FDIC. It also is intended to permit the FDIC to fulfill its legal mandates as deposit insurer by facilitating assessment of insured depository institutions' risk, and regarding the resolution of failed insured depository institutions, to provide liquidity to depositors promptly, enhance market discipline, ensure equitable treatment of depositors at different insured depository institutions, and reduce the FDIC's costs by preserving the franchise value of a failed insured depository institution.

(b) *Definitions*—(1) *Affiliate* has the same meaning given to such term in Section 3(w)(6) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(w)(6).

(2) *Covered Insured Depository Institution (CIDI)* means an insured depository institution with greater than $10 billion in total assets that is owned or controlled by a parent company with more than $100 billion in total consolidated assets.

(3) *Non-Covered Insured Depository Institution* means an FDIC-insured depository institution that does not meet the definition of a *CIDI.*

(4) *Parent company* means any company that controls, directly or indirectly, an insured depository institution.

(5) *Company* has the same meaning given to such term in § 362.2(d) of the FDIC's Regulations, 12 CFR 362.2(d).

(6) *Subsidiary* has the same meaning given to such term in Section 3(w)(4) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(w)(4).

(7) *Total assets* are defined in the instructions for the filing of Reports of Income and Condition and Thrift Financial Reports, as applicable to the insured depository institution for determining whether it qualifies as a CIDI.

(c) *Contingent Resolution Plans to be Submitted by CIDIs to FDIC*—(1) *General.* (i) Every CIDI, beginning on the effective date of this section as set forth in paragraph (d) of this section, must submit to the FDIC, in a form and at a place to be prescribed, a contingent resolution plan containing at least the information described in this section, and meeting the standards described in this section. The contingent resolution plan is to address the CIDI's ability to be resolved in an orderly fashion in the event of its receivership, the insolvency of the parent or key affiliates. The CIDI's contingent resolution plan should discuss its ability to unwind or separate the CIDI from the conglomerate structure in a cost-effective and timely fashion. The plan should disclose material obstacles to an orderly resolution of the CIDI, inter-connections and inter-dependencies that hinder the timely and effective resolution of the CIDI, and include the remediation steps or mitigating responses necessary to eliminate or minimize such obstacles. The FDIC will review the plan in consultation with the primary Federal regulator of the CIDI and the parent company to determine whether the plan is workable and effective. FDIC may reject the plan and require its resubmission if it fails to contain the required information or otherwise fails to meet the standards prescribed in this section.

(ii) In developing the contingent resolution plan, CIDIs should consider the institution's size relative to its parent company structure, its interdependence with the national and international marketplaces, as well as how easily its financial company products or services can be substituted with the services of other organizations.

(2) *Use of existing documents; updating of analysis.* The CIDI may incorporate or include specific references to current reports or publicly filed information.

(3) *Standards for Plan Content.* The following set forth the minimum standards for the contingent resolution plan to be provided by CIDIs:

(i) Provide detailed information, covering material risks, business lines, operations, activities and exposures of the CIDI and its subsidiaries necessary to develop an effective contingent resolution plan.

(ii) Set forth the institution's analysis that identifies material impediments to an orderly resolution of the CIDI in the event of its insolvency, the insolvency of its parent or critical affiliates, and describing the remediation or mitigating steps that are or will be taken to eliminate or mitigate such impediments.

(iii) Provide information to the FDIC to allow the isolation of the CIDI and allow for effective resolution strategy development and contingency planning for a period of severe financial distress, describing means of preserving franchise value, maximizing recovery to creditors, and minimizing systemic impacts on the financial system.

(iv) The contingent resolution plan should be tailored to the size, complexity and risk profile of the institution, provide remediation steps that are feasible and capable of execution within a reasonable time frame, and set forth a time period within which remediation actions are to be concluded.

(v) The analysis and plan must be approved by the institution's Board of Directors or designated executive committee.

(vi) The analysis and contingent resolution plan must be updated on a regular, at least, annual, basis, and demonstrate an ability to provide current and updated information on material elements described in paragraph (d)(1) of this section.

(4) *Minimum Components of the Required Contingent Resolution Plan.* At a minimum the contingent resolution plan should include the following elements:

(i) *Summary of Analysis and Contingent Resolution Plan.* Summarize the material impediments to an orderly resolution of the CIDI separate from its parent and affiliates and a description of specific, credible remedial or mitigating steps that are or would be taken to eliminate or minimize such impediments. For example, reliance upon affiliates to provide critical servicers can establish an impediment to transferring the assets, liabilities and operations to an acquiring institution or bridge bank. This gap may be remediated by the development of continuity provisions in relevant contracts or by establishing pre-arranged substitution for such services.

(ii) *Organizational Structure.* Provide the IDI's, parent company's, and affiliates' legal and functional structures, and identity of key personnel tasked with managing major components within the organization materially affecting the CIDI.

(iii) *Business Activities, Relationships and Counterparty Exposures.* Identify and describe the business activities of the CIDI and its subsidiaries, along with an explanation of material inter-relationships among the entities in the organizational structure (for example, identification of major counterparties (especially for financial contracts) and affiliates) that provide key services and support. Critical services that are provided by affiliates, such as servicing, human resources, information technology support and operations, human resources or personnel should be identified. This section should also provide an assessment of each material affiliate's ability to function on a stand-alone basis.

(iv) *Capital Structure.* Detail the CIDI's capital structure, as well as that of its parent, each subsidiary, and key affiliates. Provide complete financial information in the form of audited financial statements presented along with line-item descriptions of the assets, liabilities, and equity comprising the balance sheets of the parent company as a consolidated entity as well as each CIDI. Describe corporate financing arrangements for the institution, its subsidiaries, parent and key affiliates. Identify funding, liquidity, refinancing and concentration risks associated with the various capital pools being utilized. Identify the key exposures to systemic risk and the availability of a substitute that would mitigate the effect of a systemic event.

(v) *Intra-Group Funding, Transactions, Accounts, Exposures and Concentrations.* Relative to the CIDI, describe intra-group funding relationships, accounts, and exposures, including terms, purpose, and duration. These would include, for example, a description of intra-group financial exposures, claims or liens, lending or borrowing lines and relationships, guaranties, asset accounts, deposits, or derivatives transactions. Clearly identify the nature and extent to which the CIDI's parent or affiliates are to serve as a source of funding to the CIDI, the terms of any contractual arrangements, the location of related assets, funds or deposits and the mechanisms by which funds can be down-streamed from the parent to the CIDI.

(vi) *Systemically Important Functions.* Describe systemically important functions that the CIDI, its subsidiaries and affiliates provide, including the nature and extent of the institution's involvement in payment systems, custodial or clearing operations, large sweep programs, and capital markets operations in which it plays a dominant role. Discuss critical vulnerabilities, estimated exposure and potential losses, and why certain attributes of the businesses detailed in previous sections could pose a systemic risk to the broader economy.

(vii) *Material Events.* Describe events, *e.g.,* acquisitions, sales, litigation, operational and fiscal challenges, that have had a material affect on the IDI and its relationship with its parent company or affiliates, since the last iteration of the analysis and plan.

(viii) *Cross-Border Elements.* Discuss the nature and extent of the CIDI's cross-border interrelationships and exposures; describe individual components of the group structure that are based or located outside the United States, including foreign branches, subsidiaries and offices. Provide detail on the location and amount of foreign deposits and assets. This information is necessary to facilitate the FDIC's determination of the legal and policy framework under which such assets might be resolved in the event of insolvency, including the framework for providing liquidity, the terms and restrictions of government support, and the operational and technical challenges of international payment systems.

(ix) *Any other material factor* that may impede the orderly resolution of the CIDI separately from its parent and affiliates.

(x) *Time frame.* The plan should identify a time frame within which identified remediation efforts shall be achieved.

(xi) *Approval.* The CIDI's board of directors or designated executive committee must approve the analysis and plan and attest that the plan is accurate and that the information is current.

(5) *No limiting effect on FDIC as receiver.* No contingency resolution plan provided pursuant to this rule shall be binding on the FDIC as receiver for a covered IDI.

(d) *Implementation requirements.* (1) The gap analysis and plan must be submitted within 6 months of the effective date of the rule and must be updated annually. FDIC may extend these deadlines in individual cases for good cause shown. Material information elements must be updated as necessary given the risk profile and structure of the institution relative to its affiliates (*e.g.,* deposit flows, intra-group funding flows, short-term funding, derivatives transactions, assets subject to market volatility; or material changes to capital structure or sources).

(2) An insured depository institution not within the definition of a *CIDI* on the effective date of this section must comply with the requirements of this section no later than 6 months following

the end of the second calendar quarter for which it meets the criteria for a *CIDI.*

(3) Upon the merger of two or more *Non-CIDIs,* if the resulting institution meets the criteria for a *CIDI,* that *CIDI* must comply with the requirements of this section no later than 6 months after the effective date of the merger.

(4) Upon the merger of two or more *CIDIs,* the merged institution must comply with the requirements of this section within 6 months following the effective date of the merger. This provision, however, does not supplant any preexisting implementation date requirement, in place prior to the date of the merger, for the individual *CIDI(s)* involved in the merger.

(5) Upon the merger of one or more *CIDIs* with one or more *Non-CIDIs,* the merged institution must comply with the requirements of this section within 6 months following the effective date of the merger. This provision, however, does not supplant any preexisting implementation date requirement for the individual *CIDI(s)* involved in the merger.

(6) Notwithstanding the general requirements of this paragraph (d), on a case-by-case basis, the FDIC may accelerate, upon notice, the implementation and updating time frames for all or part of the requirements of this section.

(7) FDIC may, upon application of a CIDI and for good cause shown, modify or waive the minimum requirements set forth in this section for that institution. "Good cause" shall mean that, because of the CIDI's asset size, level of complexity, risk profile, scope of operations or other relevant characteristics, the FDIC is able to determine that the particular IDI does not, at the time of the application, appear to present material resolution challenges or other unusual risk to the Deposit Insurance Fund. Any such waiver or modification shall be effective for one year.

(e) *Confidentiality of Information Submitted Pursuant to this Section.* Proprietary information and information which, if disclosed, could endanger the institution's safety and soundness, should be identified and segregated to the extent possible, and be accompanied by a request for confidential treatment. Confidential information will not be disclosed except as required by law.

Dated at Washington, DC, this 11th day of May 2010.

By order of the Board of Directors.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2010–11646 Filed 5–14–10; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AD53

Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation After September 30, 2010

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Federal Deposit Insurance Corporation ("FDIC") proposes to adopt amendments to the rule regarding the treatment by the FDIC, as receiver or conservator of an insured depository institution, of financial assets transferred by the institution in connection with a securitization or a participation after September 30, 2010 (the "Proposed Rule"). The Proposed Rule would continue the safe harbor for transferred financial assets in connection with securitizations in which the financial assets were transferred under the existing regulations. The Proposed Rule would clarify the conditions for a safe harbor for securitizations or participations issued after September 30, 2010. The Proposed Rule also sets forth safe harbor protections for securitizations that do not comply with the new accounting standards for off balance sheet treatment by providing for expedited access to the financial assets that are securitized if they meet the conditions defined in the Proposed Rule. The conditions contained in the Proposed Rule would serve to protect the Deposit Insurance Fund ("DIF") and the FDIC's interests as deposit insurer and receiver by aligning the conditions for the safe harbor with better and more sustainable securitization practices by insured depository institutions ("IDIs"). The FDIC seeks comment on the regulations, the scope of the safe harbors provided, and the terms and scope of the conditions included in the Proposed Rule.

DATES: Comments on this Notice of Proposed Rulemaking must be received by July 1, 2010.

ADDRESSES: You may submit comments on the Proposed Rule, by any of the following methods:

- *Agency Web Site: http://www.FDIC.gov/regulations/laws/federal/notices.html.* Follow instructions for submitting comments on the Agency Web Site.
- *E-mail: Comments@FDIC.gov.* Include RIN 3064–AD53 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, *Attention:* Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All comments received will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal/propose.html,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Michael Krimminger, Office of the Chairman, 202–898–8950; George Alexander, Division of Resolutions and Receiverships, (202) 898–3718; Robert Storch, Division of Supervision and Consumer Protection, (202) 898–8906; or R. Penfield Starke, Legal Division, (703) 562–2422, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

In 2000, the FDIC clarified the scope of its statutory authority as conservator or receiver to disaffirm or repudiate contracts of an insured depository institution with respect to transfers of financial assets by an IDI in connection with a securitization or participation when it adopted a regulation codified at 12 CFR 360.6 (the "Securitization Rule"). This rule provided that the FDIC as conservator or receiver would not use its statutory authority to disaffirm or repudiate contracts to reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by an IDI in connection with a securitization or in the form of a participation, provided that such transfer meets all conditions for sale accounting treatment under generally accepted accounting principles ("GAAP"). The rule was a clarification, rather than a limitation, of the repudiation power. Such power authorizes the conservator or receiver to breach a contract or lease entered into

by an IDI and be legally excused from further performance, but it is not an avoiding power enabling the conservator or receiver to recover assets that were previously sold and no longer reflected on the books and records on an IDI.

The Securitization Rule provided a "safe harbor" by confirming "legal isolation" if all other standards for off balance sheet accounting treatment, along with some additional conditions focusing on the enforceability of the transaction, were met by the transfer in connection with a securitization or a participation. Satisfaction of "legal isolation" was vital to securitization transactions because of the risk that the pool of financial assets transferred into the securitization trust could be recovered in bankruptcy or in a bank receivership. Generally, to satisfy the legal isolation condition, the transferred financial assets must have been presumptively placed beyond the reach of the transferor, its creditors, a bankruptcy trustee, or in the case of an IDI, the FDIC as conservator or receiver. The Securitization Rule, thus, addressed only purported sales which met the conditions for off balance sheet accounting treatment under GAAP.

Since its adoption, the Securitization Rule has been relied on by securitization participants, including rating agencies, as assurance that investors could look to securitized financial assets for payment without concern that the financial assets would be interfered with by the FDIC as conservator or receiver. Recently, the implementation of new accounting rules has created uncertainty for securitization participants.

Modifications to GAAP Accounting Standards

On June 12, 2009, the Financial Accounting Standards Board ("FASB") finalized modifications to GAAP through Statement of Financial Accounting Standards No. 166, *Accounting for Transfers of Financial Assets, an Amendment of FASB Statement No. 140* ("FAS 166") and Statement of Financial Accounting Standards No. 167, *Amendments to FASB Interpretation No. 46(R)* ("FAS 167") (the "2009 GAAP Modifications"). The 2009 GAAP Modifications are effective for annual financial statement reporting periods that begin after November 15, 2009. The 2009 GAAP Modifications made changes that affect whether a special purpose entity ("SPE") must be consolidated for financial reporting purposes, thereby subjecting many SPEs to GAAP consolidation requirements. These accounting changes may require an IDI to consolidate an issuing entity to which financial assets have been transferred for securitization on to its balance sheet for financial reporting purposes primarily because an affiliate of the IDI retains control over the financial assets.[1] Given the 2009 GAAP Modifications, legal and accounting treatment of a transaction may no longer be aligned. As a result, the safe harbor provision of the Securitization Rule may not apply to a transfer in connection with a securitization that does not qualify for off balance sheet treatment.

FAS 166 also affects the treatment of participations issued by an IDI, in that it defines participating interests as pari-passu pro-rata interests in financial assets, and subjects the sale of a participation interest to the same conditions as the sale of financial assets. Statement FAS 166 provides that transfers of participation interests that do not qualify for sale treatment will be viewed as secured borrowings. While the GAAP modifications have some effect on participations, most participations are likely to continue to meet the conditions for sale accounting treatment under GAAP.

FDI Act Changes

In 2005, Congress enacted 11(e)(13)(C)[2] of the Federal Deposit Insurance Act (the "FDI Act")[3]. In relevant part, this paragraph provides that generally no person may exercise any right or power to terminate, accelerate, or declare a default under a contract to which the IDI is a party, or obtain possession of or exercise control over any property of the IDI, or affect any contractual rights of the IDI, without the consent of the conservator or receiver, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator or the 90-day period beginning on the date of the appointment of the receiver. If a securitization is treated as a secured borrowing, section 11(e)(13)(C) could prevent the investors from recovering monies due to them for up to 90 days. Consequently, securitized assets that remain property of the IDI (but subject to a security interest) would be subject to the stay, raising concerns that any attempt by securitization noteholders to exercise remedies with respect to the IDI's assets would be delayed. During the stay, interest and principal on the securitized debt could remain unpaid. The FDIC has been advised that this 90-day delay would cause substantial downgrades in the ratings provided on existing securitizations and could prevent planned securitizations for multiple asset classes, such as credit cards, automobile loans, and other credits, from being brought to market.

Analysis

The FDIC believes that several of the issues of concern for securitization participants regarding the impact of the 2009 GAAP Modifications on the eligibility of transfers of financial assets for safe harbor protection can be addressed by clarifying the position of the conservator or receiver under established law. Under Section 11(e)(12) of the FDI Act,[4] the conservator or receiver cannot use its statutory power to repudiate or disaffirm contracts to avoid a legally enforceable and perfected security interest in transferred financial assets. This provision applies whether or not the securitization meets the conditions for sale accounting. The Proposed Rule would clarify that prior to any monetary default or repudiation, the FDIC as conservator or receiver would consent to the making of required payments of principal and interest and other amounts due on the securitized obligations during the statutory stay period. In addition, if the FDIC decides to repudiate the securitization transaction, the payment of repudiation damages in an amount equal to the par value of the outstanding obligations on the date of receivership will discharge the lien on the securitization assets. This clarification in paragraphs (d)(4) and (e) of the Proposed Rule addresses certain questions that have been raised about the scope of the stay codified in Section 11(e)(13)(C).

An FDIC receiver generally makes a determination of what constitutes property of an IDI based on the books and records of the failed IDI. If a securitization is reflected on the books and records of an IDI for accounting purposes, the FDIC would evaluate all facts and circumstances existing at the time of receivership to determine whether a transaction is a sale under applicable state law or a secured loan. Given the 2009 GAAP Modifications, there may be circumstances in which a sale transaction will continue to be reflected on the books and records of the IDI because the IDI or one of its affiliates

[1] Of particular note, Paragraph 26A of FAS 166 introduces a new concept that was not in FAS 140, as follows: "* * * the transferor must first consider whether the transferee would be consolidated by the transferor. Therefore, if all other provisions of this Statement are met with respect to a particular transfer, and the transferee would be consolidated by the transferor, then the transferred financial assets would not be treated as having been sold in the financial statements being presented."

[2] 12 U.S.C. 1821(e)(13)(C).

[3] 12 U.S.C. 1811 *et. seq.*

[4] 12 U.S.C. 1821(e)(12).

continues to exercise control over the assets either directly or indirectly. The Proposed Rule would provide comfort that conforming securitizations which do not qualify for off balance sheet treatment would have access to the assets in a timely manner irrespective of whether a transaction is viewed as a legal sale.

If a transfer of financial assets by an IDI to an issuing entity in connection with a securitization is not characterized as a sale, the securitized assets would be viewed as subject to a perfected security interest. This is significant because the FDIC as conservator or receiver is prohibited by statute from avoiding a legally enforceable or perfected security interest, except where such an interest is taken in contemplation of insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution.[5] Consequently, the ability of the FDIC as conservator or receiver to reach financial assets transferred by an IDI to an issuing entity in connection with a securitization, if such transfer is characterized as a transfer for security, is limited by the combination of the status of the entity as a secured party with a perfected security interest in the transferred assets and the statutory provision that prohibits the conservator or receiver from avoiding a legally enforceable or perfected security interest.

Thus, for securitizations that are consolidated on the books of an IDI, the Proposed Rule would provide a meaningful safe harbor irrespective of the legal characterization of the transfer. There are two situations in which consent to expedited access to transferred assets would be given—(i) monetary default under a securitization by the FDIC as conservator or receiver or (ii) repudiation of the securitization agreements by the FDIC. The Proposed Rule provides that in the event the FDIC is in monetary default under the securitization documents and the default continues for a period of ten (10) business days after written notice to the FDIC, the FDIC will be deemed to consent pursuant to Section (11)(e)(13)(C) to the exercise of contractual rights under the documents on account of such monetary default, and such consent shall constitute satisfaction in full of obligations of the IDI and the FDIC as conservator or receiver to the holders of the securitization obligations.

The Proposed Rule also provides that in the event the FDIC repudiates the securitization asset transfer agreement, the FDIC shall have the right to discharge the lien on the financial assets included in the securitization by paying damages in an amount equal to the par value of the obligations in the securitization on the date of the appointment of the FDIC as conservator or receiver, less any principal payments made to the date of repudiation. If such damages are not paid within ten (10) business days of repudiation, the FDIC will be deemed to consent pursuant to Section (11)(e)(13)(C) to the exercise of contractual rights under the securitization agreements.

The Proposed Rule would also confirm that, if the transfer of the assets is viewed as a sale for accounting purposes (and thus the assets are not reflected on the books of an IDI), the FDIC as receiver would not reclaim, recover, or recharacterize as property of the institution or the receivership assets of a securitization through repudiation or otherwise, but only if the transactions comply with the requirements set forth in paragraphs (b) and (c) of the Proposed Rule. The treatment of off balance sheet transfers of the Proposed Rule is consistent with the prior safe harbor under the Securitization Rule.

Pursuant to 12 U.S.C. 1821(e)(13)(C), no person may exercise any right or power to terminate, accelerate, or declare a default under a contract to which the IDI is a party, or to obtain possession of or exercise control over any property of the IDI, or affect any contractual rights of the IDI, without the consent of the conservator or receiver, as appropriate, during the 45-day period beginning on the date of the appointment of the conservator or the 90-day period beginning on the date of the appointment of the receiver. In order to address concerns that the statutory stay could delay repayment of investors in a securitization or delay a secured party from exercising its rights with respect to securitized financial assets, the Proposed Rule provides for the consent by the conservator or receiver, subject to certain conditions, to the continued making of required payments under the securitization documents and continued servicing of the assets, as well as the ability to exercise self-help remedies after a payment default by the FDIC or the repudiation of a securitization asset transfer agreement during the stay period of 12 U.S.C. 1821(e)(13)(C).

The FDIC recognizes that, as a practical matter, the scope of the comfort that would be provided by the Proposed Rule is more limited than that provided in the Securitization Rule. However, the FDIC believes that the proposed requirements are necessary to support sustainable securitization. The safe harbor is not exclusive, and it does not address any transactions that fall outside the scope of the safe harbor or that fail to comply with one or more safe harbor conditions. The FDIC believes that its safe harbor should promote responsible financial asset underwriting and increase transparency in the market.

Previous Rulemakings

On November 12, 2009, the FDIC issued an Interim Final Rule amending 12 CFR 360.6, Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation, to provide for safe harbor treatment for participations and securitizations until March 31, 2010, which was further amended on March 11, 2010, by a Final Rule extending the safe harbor until September 30, 2010 (as so amended, the "Transition Rule"). Under the Transition Rule, all existing securitizations as well as those for which transfers were made or, for revolving trusts, for which obligations were issued prior to September 30, 2010, were permanently "grandfathered" so long as they complied with the pre-existing § 360.6.

At its December 15, 2009 meeting, the Board adopted an Advance Notice of Proposed Rulemaking ("ANPR") that sought public comment on the scope of amendments to Section 360.6, as well as the requirements for the application of the safe harbor. The ANPR and the public comments received are discussed below in Sections III and IV.

The 2009 GAAP Modifications affect the way securitizations are viewed by the rating agencies and whether they can achieve ratings that are based solely on the credit quality of the financial assets, independent from the rating of the IDI. Rating agencies are concerned with several issues, including the ability of a securitization transaction to pay timely principal and interest in the event the FDIC is appointed receiver or conservator of the IDI. Rating agencies are also concerned with the ability of the FDIC to repudiate the securitization obligations and pay damages that may be less than the full principal amount of such obligations and interest accrued thereon. Moody's, Standard & Poor's, and Fitch have expressed the view that because of the 2009 GAAP Modifications and the extent of the FDIC's rights and powers as conservator or receiver, bank securitization transactions would have to be linked to the rating of the IDI and are unlikely to receive "AAA" ratings if the bank is rated below "A". This view is based in

[5] 12 U.S.C. 1821(e)(12).

part on the ratings agencies' assessment of the delay involved in receipt of amounts due with respect to securitization obligations and the amount of repudiation damages payable under the FDI Act. Securitization practitioners have asked the FDIC to provide assurances regarding the position of the conservator or receiver as to the treatment of both existing and future securitization transactions to enable securitizations to be structured in a manner that enables them to achieve de-linked ratings.

Purpose of the Proposed Rule

The FDIC, as deposit insurer and receiver for failed IDIs, has a unique responsibility and interest in ensuring that residential mortgage loans and other financial assets originated by IDIs are originated for long-term sustainability. The supervisory interest in origination of quality loans and other financial assets is shared with other bank and thrift supervisors. Nevertheless, the FDIC's responsibilities to protect insured depositors and resolve failed insured banks and thrifts and its responsibility to the DIF require that when the FDIC provides a safe harbor consenting to special relief from the application of its receivership powers, it must do so in a manner that fulfills these responsibilities.

The evident defects in many subprime and other mortgages originated and sold into securitizations requires attention by the FDIC to fulfill its responsibilities as deposit insurer and receiver in addition to its role as a supervisor. The defects and misalignment of incentives in the securitization process for residential mortgages were a significant contributor to the erosion of underwriting standards throughout the mortgage finance system. While many of the troubled mortgages were originated by non-bank lenders, insured banks and thrifts also made many troubled loans as underwriting standards declined under the competitive pressures created by the returns achieved by lenders and service providers through the "originate to distribute" model.

Defects in the incentives provided by securitization through immediate gains on sale for transfers into securitization vehicles and fee income directly led to material adverse consequences for insured banks and thrifts. Among these consequences were increased repurchase demands under representations and warranties contained in securitization agreements, losses on purchased mortgage and asset-backed securities, severe declines in financial asset values and in mortgage- and asset-backed security values due to spreading market uncertainty about the value of structured finance investments, and impairments in overall financial prospects due to the accelerated decline in housing values and overall economic activity. These consequences, and the overall economic conditions, directly led to the failures of many IDIs and to significant losses to the DIF. In this context, it would be imprudent for the FDIC to provide consent or other clarification of its application of its receivership powers without imposing requirements designed to realign the incentives in the securitization process to avoid these devastating effects.

The FDIC's adoption of 12 CFR 360.6 in 2000 provided clarification of "legal isolation" and facilitated legal and accounting analyses that supported securitization. In view of the accounting changes and the effects they have upon the application of the Securitization Rule, it is crucial that the FDIC provide clarification of the application of its receivership powers in a way that reduces the risks to the DIF by better aligning the incentives in securitization to support sustainable lending and structured finance transactions.

The Proposed Rule is fully consistent with the position of the FDIC in the Final Covered Bond Policy Statement of July 15, 2008. In that Policy Statement, the FDIC Board of Directors acted to clarify how the FDIC would treat covered bonds in the case of a conservatorship or receivership with the express goal of thereby facilitating the development of the U.S. covered bond market. As noted in that Policy Statement, it served to "define the circumstances and the specific covered bond transactions for which the FDIC will grant consent to expedited access to pledged covered bond collateral." The Policy Statement further specifically referenced the FDIC's goal of promoting development of the covered bond market, while protecting the DIF and prudently applying its powers as conservator or receiver.[6]

The Proposed Rule is also consistent with the amendments to Regulation AB proposed by the Securities and Exchange Commission ("SEC") on April 7, 2010 (as so proposed to be amended, "New Regulation AB"). The proposed amendments represent a significant overhaul of Regulation AB and related rules governing the offering process, disclosure requirements and ongoing reporting requirements for securitizations. New Regulation AB would establish extensive new requirements for both SEC registered publicly offered securitization and many private placements, including disclosure of standardized financial asset level information, enhanced investor cash flow modeling tools and on-going information reporting requirements. In addition New Regulation AB requires certain certifications to the quality of the financial asset pool, retention by the sponsor or an affiliate of a portion of the securitization securities and third party reports on compliance with the sponsor's obligation to repurchase assets for breach of representations and warranties as a precondition to an issuer's ability to use a shelf registration. The disclosure and retention requirements of New Regulation AB are consistent with and support the approach of the Proposed Rule.

To ensure that IDIs are sponsoring securitizations in a responsible and sustainable manner, the Proposed Rule would impose certain conditions on all securitizations and additional conditions on securitizations that include residential mortgages ("RMBS"), including those that qualify as true sales, as a prerequisite for the FDIC to grant consent to the exercise of the rights and powers listed in 12 U.S.C. 1821(e)(13)(C) with respect to such financial assets. To qualify for the safe harbor provision of the Proposed Rule, the conditions must be satisfied for any securitization (i) for which transfers of financial assets were made on or after September 30, 2010 or (ii) for revolving trusts, for which obligations were issued on or after September 30, 2010.

The FDIC believes that the transitional period until September 30, 2010, that is currently provided for in the Transitional Rule is sufficient to allow sponsors and other participants in securitizations to restructure transactions to comply with the new accounting requirements, and to properly structure transactions which meet the conditions of the Proposed Rules, when final. However, the FDIC is requesting public comment on the adequacy of the transitional period under the Transitional Rule for potential changes to securitizations to comply with the Proposed Rule.

II. The ANPR

On January 7, 2010, the FDIC published its Advance Notice of Proposed Rulemaking Regarding Treatment by the FDIC as Conservator or Receiver of Financial Assets Transferred by an IDI in Connection with a Securitization or Participation After March 31, 2010 in the **Federal Register**. 75 FR 935 (Jan. 7, 2010). The ANPR

[6] FDIC Covered Bond Policy Statement, 73 FR 43754 *et seq.* (July 28, 2008)

solicited public comment for 45 days relating to proposed amendments to the Securitization Rule regarding the treatment by the FDIC, as receiver or conservator of an IDI, of financial assets transferred by an IDI in connection with a securitization or participation transaction.

The ANPR set forth specific questions as to which comments were sought and, in addition, in order to provide a basis for consideration of the questions, the ANPR included a draft of sample regulatory text (the "Sample Text"). The questions posed by the ANPR were grouped under the following general categories:

A. *Capital Structure and Financial Assets.* These questions included whether there should be limitations on the capital structures of securitizations that are eligible for safe harbor treatment, including whether the number of tranches should be limited and whether external credit support should be prohibited or limited.

B. *Disclosure.* These questions included whether disclosures for private placements should be required to include the types of information and level of specificity applicable to public securitizations and inquiries as to the degree of disclosure and periodic reports that should be required, as well as whether broker, rating agency and other fees should be disclosed.

C. *Documentation and Record Keeping.* These questions included whether securitization documentation should be required to include certain provisions relating to actions by servicers, such as requiring servicers to act for the benefit of all investors and commence loss mitigation within a specified time period, and whether there should be limits on the ability of servicers to make advances.

D. *Compensation.* These questions included whether a portion of RMBS fees should be deferred and paid out over a number of years based on the performance of the financial assets and whether compensation to servicers should be required to take into account services provided and include incentives for servicing and loss mitigation actions that maximize the value of financial assets.

E. *Origination and Risk Retention.* These questions included whether sponsors should be required to retain an economic interest in the credit risk of the financial assets, and whether a requirement that mortgage loans included in RMBS be originated more than twelve (12) months before being transferred for a securitization would be an effective way to align incentives to promote sound lending or, alternatively, whether a one (1) year hold back of proceeds due to the sponsor to fund repurchase requirements after a review of representations and warranties would better fulfill the goal of such alignment.

In addition, the ANPR included questions relating to the adequacy of the scope of the safe harbor provisions, the effect of the change in accounting rules on participation transactions and certain other general questions.

III. Summary of Comments

The FDIC received 36 comment letters on the questions posed by the ANPR and on provisions of the Sample Text, and held one teleconference with interested parties at which details of the ANPR were discussed. The letters included comments from trade associations, banks, law firms, rating agencies, consumer advocates and investors, among others.

Institutional investors and consumer advocates supported many of the proposed changes as responsive to the issues demonstrated in the current crisis by the prior model of securitization. Certain institutional investors commented specifically on the need for greater disclosures of loan level data and emphasized the value of disclosures and strong representations and warranties as important in allowing investors to understand and limit the ongoing risks in a securitization. Consumer advocate and investor comments also included support for risk retention and greater clarity in servicing responsibilities.

A number of banks, law firms and industry trade organizations opposed the new conditions set forth in paragraph (b) of the Proposed Rule for a variety of reasons. Their comments in opposition to the conditions included disagreement that such requirements would serve to promote more long-term sustainability for loans and other financial assets originated by IDIs, and objections that the conditions would impose additional costs on IDIs and competitively disadvantage IDIs in relation to non-regulated securitization sponsors. Several commenters stated that the FDIC should not unilaterally adopt new conditions, and some urged the FDIC to act only on an interagency basis or following final Congressional action.

These comments reflect a misunderstanding of the purpose of the conditions. The conditions are designed to provide greater clarity and transparency to allow a better ongoing evaluation of the quality of lending by banks and reduce the risks to the DIF from the opaque securitization structures and the poorly underwritten loans that led to the onset of the financial crisis. In addition, these comments fail to recognize that securitization as a viable liquidity tool in mortgage finance will not return without greater transparency and clarity because investors have experienced the difficulties provided by the existing model of securitization. However, greater transparency is not solely for investors but will serve to more closely tie the origination of loans to their long-term performance by requiring disclosure of that performance. Moreover, many of the conditions are supported by New Regulation AB and are reflected in proposed financial services legislation.

Several commenters also objected to inclusion of certain conditions, especially ongoing requirements or subjective criteria, because they would make it more difficult for persons analyzing a securitization to conclude at the outset of the securitization whether the conditions to the safe harbor have been satisfied. Some commenters asserted that, as a result, it would be difficult for the rating agencies to de-link the rating of a securitization from the rating of the sponsor. While the FDIC is not persuaded that rating agencies, which normally evaluate qualitative information, would not evaluate compliance with certain subjective criteria, the Proposed Rule has been drafted to tie disclosure and various other requirements to the contractual terms of the securitization. This should enable both rating agencies and investors to assess whether a transaction meets the conditions in the Proposed Rule.

Comment letters also requested that the FDIC confirm that the safe harbor is not exclusive and, thus, that the failure of a securitization transaction to satisfy one or more safe harbor conditions would not make the financial assets transferred to a special purpose issuing entity subject to reclamation by a receiver. Commenters also requested that the FDIC confirm its agreement with the legal principle that the power to repudiate a contract is not a power to avoid asset transfers. As indicated above, the FDIC does not view the safe harbor as exclusive, but cannot provide comfort as to transactions that are not eligible for the safe harbor. The FDIC also recognizes that the power to repudiate a contract is not a power to recover assets that were previously sold and are no longer reflected on the books and records of an IDI.

Several commenters stated that the new accounting treatment of assets transferred as part of a securitization should not be determinative of the

FDIC's treatment of such assets in an insolvency of a bank sponsor and that the Proposed Rule should focus instead on a legal analysis in determining whether a transfer of assets should be treated as a sale. Several commenters also objected to the proposal in the ANPR to treat as secured borrowings transfers that did not satisfy the requirements for sale accounting treatment. This position is not consistent with precedent. The Securitization Rule as adopted in 2000, as well as the FDIC's longstanding evaluation of assets potentially subject to receivership powers, has addressed only the treatment of those assets by looking to their treatment under applicable accounting rules. This was explicitly stated in the Securitization Rule. In formulating the revised safe harbor, it is appropriate for the FDIC to consider whether assets are treated under GAAP as part of the IDI's balance sheet when making the determination of how to treat assets in a conservatorship or receivership.

The objections to a safe harbor based on a secured borrowing analysis are misplaced. Such safe harbor provides a high degree of certainty for securitization transfers that do not meet the requirements for off balance sheet treatment under the 2009 GAAP Modifications. Prior to the Securitization Rule, securitization transactions were typically viewed as either secured transactions or sales, and the analysis would rely on a perfected security interest in the financial assets that are subject to securitization. As a result, under the Proposed Rule, if the securitization does not meet the standards for off balance sheet treatment, irrespective of whether the transfer qualifies as a sale, the transaction would qualify for treatment as a secured transaction if it meets the requirements imposed on such transactions under the Proposed Rule. In this way, investors in securitization transactions that do not qualify for off balance sheet treatment may still receive benefits of expedited access to the securitized loans if they meet the conditions specified in the Proposed Rule.

Comments relating to specific questions posed by the ANPR are discussed below in the description of the Proposed Rule.

IV. The Proposed Rule

The Proposed Rule would replace the Securitization Rule as amended by the Transition Rule. Paragraph (a) of the Proposed Rule sets forth definitions of terms used in the Proposed Rule. It retains many of the definitions previously used in the Securitization Rule but modifies or adds definitions to the extent necessary to accurately reflect current industry practice in securitizations.

Paragraph (b) of the Proposed Rule imposes conditions to the availability of the safe harbor for transfers of financial assets to an issuing entity in connection with a securitization. These conditions make a clear distinction between the conditions imposed on RMBS from those imposed on securitizations for other asset classes. In the context of a conservatorship or receivership, the conditions applicable to all securitizations would improve overall transparency and clarity through disclosure and documentation requirements along with ensuring effective incentives for prudent lending by requiring that the payment of principal and interest be based primarily on the performance of the financial assets and by requiring retention of a share of the credit risk in the securitized loans.

The conditions applicable to RMBS are more detailed and explicit and require additional capital structure changes, disclosures, and documentation, the establishment of a reserve and deferral of compensation. These standards are intended to address the factors that caused significant losses in current RMBS securitization structures as demonstrated in the recent crisis. Confidence can be restored in RMBS markets only through greater transparency and other structures that support sustainable mortgage origination practices and require increased disclosures. These standards respond to investor demands for greater transparency and alignment of the interests of parties to the securitization. In addition, they are generally consistent with industry efforts while taking into account proposed legislative and regulatory initiatives.

Capital Structure and Financial Assets

For all securitizations, the benefits of the Proposed Rule should be available only to securitizations that are readily understood by the market, increase liquidity of the financial assets and reduce consumer costs. Any re-securitizations (securitizations supported by other securitization obligations) would need to include adequate disclosure of the obligations, including the structure and the assets supporting each of the underlying securitization obligations and not just the obligations that are transferred in the re-securitization. This requirement would apply to all re-securitizations, including static re-securitizations as well as managed collateralized debt obligations. Securitizations that are unfunded or synthetic transactions would not be eligible for expedited consent under the Proposed Rule. To support sound lending, all securitizations would be required to have payments of principal and interest on the obligations primarily dependent on the performance of the financial assets supporting the securitization. Payments of principal or interest to investors could not be contingent on market or credit events that are independent of the assets supporting the securitization, except for interest rate or currency mismatches between the financial assets and the obligations to investors.

For RMBS only, the capital structure of the securitization would be limited to six tranches or less to discourage complex and opaque structures. The most senior tranche could include time-based sequential pay or planned amortization sub-tranches, which are not viewed as separate tranches for the purpose of the six tranche requirement. This condition would not prevent an issuer from creating the economic equivalent of multiple tranches by re-securitizing one or more tranches, so long as they meet the conditions set forth in the rule, including adequate disclosure in connection with the re-securitization. In addition, RMBS could not include leveraged tranches that introduce market risks (such as leveraged super senior tranches). Although the financial assets transferred into an RMBS would be permitted to benefit from asset level credit support, such as guarantees (including guarantees provided by governmental agencies, private companies, or government-sponsored enterprises), co-signers, or insurance, the RMBS could not benefit from external credit support. The temporary payment of principal and interest, however, could be supported by liquidity facilities. These conditions are designed to limit both the complexity and the leverage of an RMBS and therefore the systemic risks introduced by them in the market.

Comments in response to the ANPR expressed concern that a limitation on the number of tranches of an RMBS would stifle innovation and would negatively affect the ability of securitizations to meet investor objectives and maximize offering proceeds. In addition, commenters argued that there should be no restriction on external third party pool level credit support, while one commenter stated that guarantees in RMBS transactions should be permitted at the loan level only if issued by

regulated third parties with proven capacity to ensure prudent loan origination and satisfy their obligations. Commenters also requested that the Proposed Rule not include the provision that a securitization may not be an unfunded securitization or synthetic transaction.

In formulating the Proposed Rule, the FDIC was mindful of the need to permit innovation and accommodate financing needs, and thus attempted to strike a balance between permitting multi-tranche structures for RMBS transactions, on the one hand, and promoting readily understandable securitization structures and limiting overleveraging of residential mortgage assets, on the other hand.

The FDIC is of the view that permitting pool level, external credit support in an RMBS can lead to overleveraging of assets, as investors might focus on the credit quality of the credit support provider as opposed to the sufficiency of the financial asset pool to service the securitization obligations.

Finally, although the Proposed Rule would exclude unfunded and synthetic securitizations from the safe harbor, the FDIC does not view the inclusion of existing credit lines that are not fully drawn in a securitization as causing such securitization to be an "unfunded securitization." In addition, to the extent an unfunded or synthetic transaction qualifies for treatment as a qualified financial contract under section (11)(e) of the FDI Act, it would not need the benefits of the safe harbor provided in the Proposed Rule in an FDIC receivership.[7]

Disclosure

For all securitizations, disclosure serves as an effective tool for increasing the demand for high quality financial assets and thereby establishing incentives for robust financial asset underwriting and origination practices. By increasing transparency in securitizations, the Proposed Rule would enable investors (which may include banks) to decide whether to invest in a securitization based on full information with respect to the quality of the asset pool and thereby provide additional liquidity only for sustainable origination practices.

The data must enable investors to analyze the credit quality for the specific asset classes that are being securitized. The FDIC would expect disclosure for all issuances to include the types of information required under current Regulation AB (17 CFR 229.1100 through 229.1123) or any successor disclosure requirements with the level of specificity that would apply to public issuances, even if the obligations are issued in a private placement or are not otherwise required to be registered.

Securitizations that would qualify under this rule must include disclosure of the structure of the securitization and the credit and payment performance of the obligations, including the relevant capital or tranche structure and any liquidity facilities and credit enhancements. The disclosure would be required to include the priority of payments and any specific subordination features, as well as any waterfall triggers or priority of payment reversal features. The disclosure at issuance would also be required to include the representations and warranties made with respect to the financial assets and the remedies for breach of such representations and warranties, including any relevant timeline for cure or repurchase of financial assets, and policies governing delinquencies, servicer advances, loss mitigation and write offs of financial assets. The periodic reports provided to investors would be required to include the credit performance of the obligations and financial assets, including periodic and cumulative financial asset performance data, modification data, substitution and removal of financial assets, servicer advances, losses that were allocated to each tranche and remaining balance of financial assets supporting each tranche as well as the percentage coverage for each tranche in relation to the securitization as a whole. The FDIC anticipates that, where appropriate for the type of financial assets included the pool, monthly reports would also include asset level information that may be relevant to investors (e.g. changes in occupancy, loan delinquencies, defaults, etc.).

Disclosure to investors would also be required to include the nature and amount of compensation paid to any mortgage or other broker, each servicer, rating agency or third-party advisor, and the originator or sponsor, and the extent to which any risk of loss on the underlying financial assets is retained by any of them for such securitization. Disclosure of changes to this information while obligations are outstanding would also be required. This disclosure should enable investors to assess potential conflicts of interests and how the compensation structure affects the quality of the assets securitized or the securitization as a whole.

For RMBS, loan level data as to the financial assets securing the mortgage loans, such as loan type, loan structure, maturity, interest rate and location of property, would also be required to be disclosed by the sponsor. Sponsors of securitizations of residential mortgages would be required to affirm compliance with applicable statutory and regulatory standards for origination of mortgage loans, including that the mortgages in the securitization pool are underwritten at the fully indexed rate relying on documented income[8] and comply with existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such additional guidance applicable at the time of loan origination.

The Proposed Rule would require sponsors to disclose a third party due diligence report on compliance with such standards and the representations and warranties made with respect to the financial assets. Finally, the Proposed Rule would require that the securitization documents require the disclosure by servicers of any ownership interest of the servicer or any affiliate of the servicer in other whole loans secured by the same real property that secures a loan included in the financial asset pool. This provision does not require disclosure of interests held by servicers or their affiliates in the securitization securities. This provision is intended to give investors information to evaluate potential servicer conflicts of interest that might impede the servicer's actions to maximize value for the benefit of investors.

Responses to questions in the ANPR concerning disclosure included requests that disclosure requirements be set forth in terms that are susceptible to verification of compliance at the time when the securitization securities are issued. Under the Proposed Rule, most of the disclosure provisions would require that the securitization documents require proper disclosure rather than making the disclosure itself a condition to eligibility for the safe

[7] 12 U.S.C. 1821(e)(10).

[8] Institutions should verify and document the borrower's income (both source and amount), assets and liabilities. For the majority of borrowers, institutions should be able to readily document income using recent W–2 statements, pay stubs, and/or tax returns. Stated income and reduced documentation loans should be accepted only if there are mitigating factors that clearly minimize the need for direct verification of repayment capacity. Reliance on such factors also should be documented. Mitigating factors might include situations where a borrower has substantial liquid reserves or assets that demonstrate repayment capacity and can be verified and documented by the lender. A higher interest rate is not considered an acceptable mitigating factor.

harbor. Under these provisions, if required disclosure is not made, there would be a default under the securitization documents, but a transaction that otherwise qualified for the safe harbor would not be ineligible for the safe harbor on the basis of inadequate disclosure.

Several letters requested that the FDIC refrain from adopting its own disclosure requirements and that private placements not be required to include the same degree of disclosure as is required for public securitizations. Concern was also expressed that loan level disclosure was inappropriate for certain asset classes, such as credit card receivables. Commenters also urged that the safe harbor should not require more information on re-securitizations than is required by the securities laws. Comments also opposed a requirement that sponsors affirm compliance with all statutory and regulatory standards for mortgage loan origination. Finally, the comments included a request that rating agency fees not be disclosed because of a concern that such disclosure would jeopardize the objectivity of the ratings process by making such information available to the rating agency analysts that rate securitizations.

The Proposed Rule recognizes that loan level disclosure may not be appropriate for each type of asset class securitization.

The FDIC believes that regardless of whether the securitization transaction is in the form of a private rather than public securities issuance, full disclosure to investors in such transaction is necessary. With respect to re-securitizations, the FDIC does not believe that there is a logical basis for requiring less disclosure than is required for original securitizations. For both securitizations and re-securitizations, the Proposed Rule would permit the omission of information that is not available to the sponsor or issuer after reasonable investigation so long as there is disclosure as to the types of information omitted and the reason for such omission. In particular, the FDIC is concerned that robust disclosure be provided in CDO transactions and that ongoing monthly reports are provided to investors in a securitization, whether or not there is an ongoing obligation for filing with respect to such securitization under the Securities Exchange Act of 1934.

Finally, the FDIC feels that disclosure of rating agency fees is very important to investors and that rating agencies can take appropriate internal measures to ensure that such disclosure does not impact the rating process.

Documentation and Recordkeeping

For all securitizations, the operative agreements are required to set forth all necessary rights and responsibilities of the parties, including but not limited to representations and warranties, ongoing disclosure requirements and any measures to avoid conflicts of interest. The contractual rights and responsibilities of each party to the transaction must provide each party with sufficient authority and discretion for such party to fulfill its respective duties under the securitization contracts.

Additional requirements apply to RMBS to address a significant issue that has been demonstrated in the mortgage crisis by improving the authority of servicers to mitigate losses on mortgage loans consistent with maximizing the net present value of the mortgages, as defined by a standardized net present value analysis. Therefore, for RMBS, contractual provisions in the servicing agreement must provide servicers with the authority to modify loans to address reasonably foreseeable defaults and to take such other action as necessary or required to maximize the value and minimize losses on the securitized financial assets. The servicers are required to apply industry best practices related to asset management and servicing.

The RMBS documents may not give control of servicing discretion to a particular class of investors. The documents must require that the servicer act for the benefit of all investors rather for the benefit of any particular class of investors. Consistent with the forgoing, the servicer must commence action to mitigate losses no later than ninety (90) days after an asset first becomes delinquent unless all delinquencies on such asset have been cured. A servicer must maintain sufficient records of its actions to permit appropriate review of its actions.

The FDIC believes that a prolonged period of servicer advances in a market downturn misaligns servicer incentives with those of the RMBS investors. Servicing advances also serve to aggravate liquidity concerns, exposing the market to greater systemic risk. Occasional advances for late payments, however, are beneficial to ensure that investors are paid in a timely manner. To that end, the servicing agreement for RMBS should not require the primary servicer to advance delinquent payments by borrowers for more than three (3) payment periods unless financing or reimbursement facilities to fund or reimburse the primary servicers are available. However, foreclosure recoveries cannot serve as the 'financing facility' for repayment of advances.

Comments on questions as to these provisions posed by the ANPR included statements that the safe harbor should not require the servicer to act for the benefit of all investors, and that the servicer should be permitted to act for a specified class of investors. In addition, concern was expressed that requiring servicer loss mitigation to maximize the net present value of the financial assets would unduly restrict the servicers.

Several comments were received relating to whether servicers should be required to commence action to mitigate losses in connection with residential mortgage securitizations within 90 days after an asset first becomes delinquent and whether servicer advances should be limited to three payment periods. The comments included suggestions that there should be no loss mitigation provisions in the safe harbor, that no set period should be established, that 90 days was too short, and that 90 days was too long. Responses relating to servicer advances included statements that the safe harbor should not include limits on servicer advances, and that a longer period for servicer advances should be permitted. One commenter suggested that servicers be given explicit authority to reduce principal and exercise forbearance as to principal payments, and that loan modification be required to be evaluated as a precondition to foreclosure.

While the FDIC agrees that servicers should be given flexibility on how best to maximize the value of financial assets, it believes that it is essential that there be certain governing principles in RMBS transactions. Maximization of net present value is a widely accepted standard for mortgage loan workouts, and the FDIC believes that use of this standard will result in the highest value being obtained. The FDIC also believes that the Proposed Rule would give the servicer authority to reduce principal or exercise forbearance if such action would maximize the value of an asset, and expects that servicers will consider loan modification in evaluating how best to maximize value.

The FDIC understands that it may not be possible to determine with absolute certainty the appropriate deadline for the commencement of servicer loss mitigation or the appropriate number of payment periods for which servicers can be required to make advances for which financing or reimbursement facilities are not available. However, the FDIC believes that a framework for sustainable securitizations must include certain deadlines and limits that address

issues identified in the current financial crisis, and that the loss mitigation deadline and servicer advance limits set forth in the Proposed Rule are appropriate. In this connection, it is important to note that action to mitigate losses may include contact with the borrower or other steps designed to return the asset to regular payments, but does not require initiation of foreclosure or other formal enforcement proceedings.

Finally, the FDIC does not agree that sustainable securitizations would be promoted if sponsors are permitted to structure securitizations where the servicer does not act for all classes of investors.

Compensation

The compensation requirements of the Proposed Rule would apply only to RMBS. Due to the demonstrated issues in the compensation incentives in RMBS, in this asset class the Proposed Rule seeks to realign compensation to parties involved in the rating and servicing of residential mortgage securitizations.

The securitization documents are required to provide that any fees payable credit rating agencies or similar third-party evaluation companies must be payable in part over the five (5) year period after the initial issuance of the obligations based on the performance of surveillance services and the performance of the financial assets, with no more than sixty (60) percent of the total estimated compensation due at closing. Thus payments to rating agencies must be based on the actual performance of the financial assets, not their ratings.

A second area of concern is aligning incentives for proper servicing of the mortgage loans. Therefore, compensation to servicers must include incentives for servicing, including payment for loan restructuring or other loss mitigation activities, which maximizes the net present value of the financial assets in the RMBS.

Commenters were divided on whether compensation to parties involved in a securitization should be deferred. Responses to the ANPR also stated that compensation to rating agencies should not be linked to performance of a securitization because such linkage would interfere with the neutral ratings process, and a rating agency expressed the concern that such linkage might give rating agencies an incentive to rate a transaction at a level that is lower than the level that the rating agency believes to be the appropriate level. Concern was also expressed that linkage of compensation to performance of the securitization could cause payment of full compensation to one category of securitization participants to be dependent in some measure on the performance of a different category of securitization participants. Comments also included an objection that if deferred performance based compensation was imposed on certain securitization participants, such as underwriters, these participants would be subject to risks that they had not expected to assume. Others commented that there should be incentives for servicers to modify loans rather than to foreclose. Concern was also expressed as to the complexity of reserving for deferred compensation and developing cash flow models relating to servicing incentives. Finally, concern was expressed that giving servicers incentives might lead to additional assets being consolidated on bank balance sheets.

Based on the comments provided, the Proposed Rule imposes the deferred compensation requirement only on fees and other compensation to rating agencies or similar third-party evaluation companies. The FDIC notes that rating agencies have procedures in place to protect analytic independence and ensure the integrity of their ratings. Compensation deferral may have certain ramifications on internal rating agency processes but should not affect the ratings or surveillance process. Finally, the FDIC is mindful of the proposal to encourage loan modification rather than foreclosure and has spearheaded efforts in this area. The Proposed Rule would include loan restructuring activities as one of the categories of loss mitigation activities for which incentive compensation could be payable to servicers.

Origination and Retention Requirements

To provide further incentives for quality origination practices, several conditions address origination and retention requirements for all securitizations. For all securitizations, the sponsor must retain an economic interest in a material portion, defined as not less than five (5) percent, of the credit risk of the financial assets. The retained interest may be either in the form of an interest of not less than five (5) percent in each credit tranche or in a representative sample of the securitized financial assets equal to not less than five (5) percent of the principal amount of the financial assets at transfer. By requiring that the sponsor retain an economic interest in the asset pool without hedging the risk of such portion, the sponsor would be less likely to originate low quality financial assets.

The Proposed Rule would require that RMBS securitization documents require that a reserve fund be established in an amount equal to at least five (5) percent of the cash proceeds due to the sponsor and that this reserve be held for twelve (12) months to cover any repurchases required for breaches of representations and warranties.

In addition, residential mortgage loans in an RMBS must comply with all statutory, regulatory and originator underwriting standards in effect at the time of origination. Residential mortgages must be underwritten at the fully indexed rate and rely on documented income and comply with all existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such additional regulations or guidance applicable at the time of loan origination.

Many commenters objected to the imposition of a 5 percent risk retention requirement, while other commenters suggested that a higher risk retention requirement might be acceptable. Objections included reference to the costs associated with this requirement, the fact that the requirement eliminates the ability of the originating bank to transfer all of the credit risk, and assertions that the requirement would constrict mortgage credit and would discourage banks from securitizing low risk assets and high quality jumbo prime loans. Commenters also objected that the retention requirements could cause securitizations that might otherwise qualify for sale accounting treatment under the 2009 GAAP Modifications to not qualify for that treatment. Many comment letters stated that the goals sought to be achieved by risk retention could be better achieved by the establishment of minimum financial asset underwriting standards. Other suggestions included establishing a reserve to support the repurchase obligations of a sponsor.

Commenters also suggested that the amount of risk to be retained should vary based on the asset type. Certain commenters suggested that certain types of assets, such as prudently underwritten loans or prime credit mortgage loans, be exempted from the retention requirement.

Concern was also expressed that attaching an anti-hedging requirement to the retained portion would interfere with proper credit risk management

practices. Comments also included the concern that requiring that all assets have been originated in compliance with all applicable underwriting standards could make the safe harbor unachievable.

Finally, many comments were received that opposed a 12 month seasoning requirement for RMBS loans that was included in the options set forth in the ANPR.

The FDIC believes that the sponsor must be required to retain an economic interest in the credit risk relating to each credit tranche or in a representative sample of financial assets in order to help ensure quality origination practices. A risk retention requirement that did not cover all types of exposure would not be sufficient to create an incentive for quality underwriting at all levels of the securitization. The recent economic crisis made clear that, if quality underwriting is to be assured, it will require true risk retention by sponsors, and that the existence of representations and warranties or regulatory standards for underwriting will not alone be sufficient. The FDIC believes that the 5 percent across the board requirement for all types of assets is appropriate, and notes that it is consistent with the requirements set forth in New Regulation AB.

Based on the comments objecting to the seasoning requirement, the Proposed Rule includes the reserve requirement in lieu of a seasoning requirement.

With respect to the concern expressed that the safe harbor may be unachievable if all assets included in an RMBS must comply with all applicable underwriting standards, the FDIC understands that during the origination process it is difficult to assure compliance with all origination and regulatory standards. While the Proposed Rule would require that the financial assets be originated in compliance with all regulatory standards, the FDIC does not view technical non-compliance with some standards, or occasional limited non-compliance with origination standards, as affecting the availability of the safe harbor.

Finally, while the Proposed Rule provides that the retained interest cannot be hedged during the term of the securitization, the FDIC does not regard this prohibition as precluding hedging the interest rate or currency risks associated with the retained portion of the securitization tranches. Rather, the FDIC views this prohibition as being directed at the credit risk of the transaction, to ensure that the originator properly underwrites the financial assets.

Additional Conditions

Paragraph (c) of the Proposed Rule includes general conditions for all securitizations and the transfer of financial assets. These conditions also include requirements that are consistent with good banking practices and are necessary to make the transactions comply with established banking law.[9]

The transaction should be an arms-length, bona fide securitization transaction and the obligations cannot be sold to an affiliate or insider. The securitization agreements must be in writing, approved by the board of directors of the bank or its loan committee (as reflected in the minutes of a meeting of the board of directors or committee), and have been, continuously, from the time of execution, in the official record of the bank. The securitization also must have been entered into in the ordinary course of business, not in contemplation of insolvency and with no intent to hinder, delay or defraud the bank or its creditors.

The Proposed Rule would apply only to transfers made for adequate consideration. The transfer and/or security interest would need to be properly perfected under the UCC or applicable state law. The FDIC anticipates that it would be difficult to determine whether a transfer complying with the Proposed Rule is a sale or a security interest, and therefore expects that a security interest would be properly perfected under the UCC, either directly or as a backup.

The sponsor would be required to separately identify in its financial asset data bases the financial assets transferred into a securitization and maintain an electronic or paper copy of the closing documents in a readily accessible form. The sponsor would also be required to maintain a current list of all of its outstanding securitizations and issuing entities, and the most recent Form 10–K or other periodic financial report for each securitization and issuing entity. If acting as servicer, custodian or paying agent, the sponsor would not be permitted to commingle amounts received with respect to the financial assets with its own assets except for the time necessary to clear payments received, and in event for more than two days. The sponsor would be required to make these records available to the FDIC promptly upon request. This requirement would facilitate the timely fulfillment of the receiver's responsibilities upon appointment and will expedite the receiver's analysis of securitization assets. This would also facilitate the receiver's analysis of the bank's assets and determination of which assets have been securitized and are therefore potentially eligible for expedited access by investors.

In addition, the Proposed Rule would require that the transfer of financial assets and the duties of the sponsor as transferor be evidenced by an agreement separate from the agreement governing the sponsor's duties, if any, as servicer, custodian, paying agent, credit support provider or in any capacity other than transferor.

The Safe Harbor

Paragraph (d)(1) of the Proposed Rule would continue the safe harbor provision that was provided by the Securitization Rule with respect to participations so long as the participation satisfies the conditions for sale accounting treatment set forth by generally accepted accounting principles.

Paragraph (d)(2) of the Proposed Rule provides that for any participation or securitization (i) for which transfers of financial assets made or (ii) for revolving trusts, for which obligations were issued, on or before September 30, 2010, the FDIC as conservator or receiver will not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets notwithstanding that such transfer does not satisfy all conditions for sale accounting treatment under generally accepted accounting principles as effective subsequent to November 15, 2009, so long as such transfer satisfied the conditions for sale accounting treatment as set forth in generally accepted accounting principles in effect prior to November 15, 2009. This provision is intended to continue the safe harbor provided by the Transition Rule.

Paragraph (d)(3) addresses transfers of financial assets made in connection with a securitization for which transfers of financial assets were made after September 30, 2010 or revolving trusts for which obligations were issued after September 30, 2010, that satisfy the conditions for sale accounting treatment under GAAP in effect for reporting periods after November 15, 2009. For such securitizations, the FDIC as conservator or receiver will not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the

[9] See, 12 U.S.C. 1823(e).

receivership any such transferred financial assets, provided that such securitization complies with the conditions set forth in paragraphs (b) and (c) of the Proposed Rule.

Paragraph (d)(4) of the Proposed Rule addresses transfers of financial assets in connection with a securitization for which transfers of financial assets were made after September 30, 2010 or revolving trusts for which obligations were issued after September 30, 2010, that satisfy the conditions set forth in paragraphs (b) and (c), but where the transfer does not satisfy the conditions for sale accounting treatment under GAAP in effect for reporting periods after November 15, 2009. Clause (A) provides that if there is a monetary default which remains uncured for ten (10) business days after actual delivery of a written request to the FDIC to exercise contractual rights because of such default, the FDIC consents to the exercise of such contractual rights, including any rights to obtain possession of the financial assets or the exercise of self-help remedies as a secured creditor or liquidating properly pledged financial assets by the investors, provided that no involvement of the receiver or conservator is required. This clause also provides that the consent to the exercise of such contractual rights shall serve as full satisfaction for all amounts due.

Clause (B) provides that if the FDIC as conservator or receiver to an IDI provides a written notice of repudiation of the securitization agreement pursuant to which assets were transferred and the FDIC does not pay the damages due by reason of such repudiation within ten (10) business days following the effective date of the notice, the FDIC consents to the exercise of any contractual rights, including any rights to obtain possession of the financial assets or the exercise of self-help remedies as a secured creditor or liquidating properly pledged financial assets by the investors, provided that no involvement of the receiver or conservator is required. Clause (B) also provides that the damages due for these purposes shall be an amount equal to the par value of the obligations outstanding on the date of receivership less any payments of principal received by the investors to the date of repudiation, and that upon receipt of such payment the investors' liens on the financial assets shall be released.

Comments as to the scope of the safe harbor, including a comment from one of the rating agencies, expressed concern with the risk of repudiation by the FDIC, in particular, the risk that the FDIC would repudiate an issuer's securitization obligations and liquidate the financial assets at a time when the market value of such assets was less than the amount of the outstanding obligations owed to investors, thus exposing investors to market value risks relating to the securitization asset pool.

The Proposed Rule addresses this concern. It clarifies that repudiation damages would be equal to the par value of the obligations as of the date of receivership less payments of principal received by the investors to the date of repudiation. The Proposed Rule also provides that the FDIC consents to the exercise of remedies by investors, including self-help remedies as secured creditors, in the event that the FDIC repudiates a securitization transfer agreement and does not pay damages in such amount within ten business days following the effective date of notice of repudiation. Thus, if the FDIC repudiates and the investors are not paid the par value of the securitization obligations, they will be permitted to obtain the asset pool. Accordingly, exercise by the FDIC of its repudiation rights will not expose investors to market value risks relating to the asset pool.

The comments also included a request that the safe harbor not condition the FDIC's consent to the exercise of secured creditor remedies on there being no involvement of the receiver or conservator. The FDIC does not believe that the condition that no involvement of the receiver of conservator be required in connection with the exercise of secured creditor remedies should be of concern to investors, because the provision should not be understood to encompass ordinary course consents or transfers of financial asset related documentation needed to facilitate customary remedies as to the collateral.

Comments also included concern that non-proportionate participation arrangements, such as LIFO participations, entered into after September 30, 2010, that do not satisfy the criteria for "participating interests" under the 2009 GAAP Modifications would no longer qualify for sale treatment because the safe harbor is available only to participations which satisfy sale accounting treatment. Because the vast majority of participations are expected to satisfy the sale accounting requirement, the Proposed Rule includes only participations that satisfy the sale accounting requirements. However, the FDIC recognizes that this formulation may exclude certain types of participations from eligibility for the safe harbor and is requesting more detailed comments on how it could address these type of participations in a manner that does not expand the safe harbor inappropriately.

Consent to Certain Payments and Servicing

Paragraph (e) provides that, during the stay period imposed by 12 U.S.C. 1821(e)(13)(C) and during the period specified in subparagraph (d)(4)(A) prior to any payment of damages or consent under 12 U.S.C. 1821(e)(13)(C) to the exercise of any contractual rights, the FDIC as conservator or receiver of the sponsor consents to the making of required payments to the investors in accordance with the securitization documents, except for provisions that take effect upon the appointment of the receiver or conservator, and to any servicing activity required in furtherance of the securitization, (subject to the FDIC's rights to repudiate such agreements) with respect to the underlying financial assets in connection with securitizations that meet the conditions set forth in paragraphs (b) and (c) of the Proposed Rule.

Responses to the ANPR included a request that the safe harbor state specifically that the FDIC will make payments prior to repudiation, rather than merely consenting to payments to the investors in accordance with the securitization documents. The FDIC does not believe that addition of this provision is necessary. Unless the FDIC repudiates an agreement, as successor to the obligations of an IDI it would continue to perform the IDI's obligations under the securitization documents. Therefore the servicer, on behalf of the FDIC, in its capacity as receiver or conservator, would apply the payments received on financial assets to securitization obligations as required under the securitization documents.

Finally, the comments included a request that provisions addressing the making of payments during the stay period not be limited to originally scheduled payments of principal and interest. In response to these comments, the Proposed Rule was drafted to permit the making of required payments in accordance with the securitization documents, excluding any such payments arising on account of insolvency or the appointment of a receiver or conservator. Under the Federal Deposit Insurance Act, such ipso facto clauses are unenforceable.[10]

Miscellaneous

Paragraph (f) requires that any party requesting the FDIC's consent pursuant

[10] 12 U.S.C. 1821(e)(13)(A)).

to paragraph (d)(4), provide notice to the FDIC together with a statement of the basis upon the request is made, together with copies of all documentation supporting the request. This would include a copy of the applicable agreements (such as the transfer agreement and the security agreement) and of any applicable notices under the agreements.

Paragraph (g) of the Proposed Rule provides that the conservator or receiver will not seek to avoid an otherwise legally enforceable agreement that is executed by an insured depository institution in connection with a securitization solely because the agreement does not meet the "contemporaneous" requirement of 12 U.S.C. 1821(d)(9), 1821(n)(4)(I), or 1823(e).

Paragraph (h) of the Proposed Rule would provide that the consents set forth in the Proposed Rule would not act to waive or relinquish any rights granted to the FDIC in any capacity, pursuant to any other applicable law or any agreement or contract except the securitization transfer agreement or any relevant security agreements, and nothing contained in the section would alter the claims priority of the securitized obligations.

Paragraph (i) provides that the Proposed Rule does not authorize, and shall not be construed as authorizing the waiver of the prohibitions in 12 U.S.C. 1825(b)(2) against levy, attachment, garnishment, foreclosure, or sale of property of the FDIC, nor does it authorize nor shall it be construed as authorizing the attachment of any involuntary lien upon the property of the FDIC. The Proposed Rule should not be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

The right to consent under 12 U.S.C. 1821(e)(13)(C) may not be assigned or transferred to any purchaser of property from the FDIC, other than to a conservator or bridge bank. The Proposed Rule could be repealed by the FDIC upon 30 days notice provided in the **Federal Register**, but any repeal would not apply to any issuance that complied with the Proposed Rule before such repeal.

V. Solicitation of Comments

The FDIC is soliciting comments on all aspects of the Proposed Rule. The FDIC specifically requests comments responding to the following:

1. Does the Proposed Rule treatment of participations provide a sufficient safe harbor to address most needs of participants? Are there changes to the Proposed Rule that would expand protection different types of participations issued by IDIs?

2. Is there a way to differentiate among participations that are treated as secured loans by the 2009 GAAP Modifications? Should the safe harbor consent apply to such participations? Is there a concern that such changes may deplete the assets of an IDI because they would apply to all participations?

3. Is the transition period to September 30, 2010, sufficient to implement the changes required by the conditions identified by Paragraph (b) and (c)? In light of New Regulation AB, how does this transition period impact existing shelf registrations?

4. Does the capital structure for RMBS identified by paragraph (b)(1)(ii)(A) provide for a structure that will allow for effective securitization of well-underwritten mortgage loan assets? Does it create any specific issues for specific mortgage assets?

5. Do the disclosure obligations for all securitizations identified by paragraph (b)(2) meet the needs of investors? Are the disclosure obligations for RMBS identified by paragraph (b)(2) sufficient? Are there additional disclosure requirements that should be imposed to create needed transparency? How can more standardization in disclosures and in the format of presentation of disclosures be best achieved?

6. Do the documentation requirements in paragraph (b)(3) adequately describe that rights and responsibilities of the parties to the securitization that are required? Are there other or different rights and responsibilities that should be required?

7. Do the documentation requirements applicable only to RMBS in paragraph (b)(3) adequately describe the authorities necessary for servicers? Should similar requirements be applied to other asset classes?

8. Are the servicer advance provisions applicable only to RMBS in paragraphs (b)(3)(ii)(A) effective to provide effective incentives for servicers to maximize the net present value of the serviced assets? Do these provisions create any difficulties in application? Are similar provisions appropriate for other asset classes?

9. Is the limitation on servicer interest applicable only to RMBS in paragraph (b)(3)(ii)(C) effective to minimize servicer conflicts of interest? Does this provision create any difficulties in application? Are similar provisions appropriate for other asset classes?

10. Are the compensation requirements applicable only to RMBS in paragraph (b)(4) effective to align incentives of all parties to the securitization for the long-term performance of the financial assets? Are these requirements specific enough for effective application? Are there alternatives that would be more effective? Should similar provisions be applied to other asset classes?

11. Are the origination or retention requirements of paragraph (b)(5) appropriate to support sustainable securitization practices? If not, what adjustments should be made?

12. Is the requirement that a reserve fund be established to provide for repurchases for breaches of representations and warranties an effective way to align incentives to promote sound lending? What are the costs and benefits of this approach? What alternatives might provide a more effective approach?

13. Is retention by the sponsor of a 5 percent "vertical strip" of the securitization adequate to protect investors? Should any hedging strategies or transfers be allowed?

14. Do you have any other comments on the conditions imposed by paragraphs (b) and (c)?

15. Is the scope of the safe harbor provisions in paragraph (d) adequate? If not, what changes would you suggest?

16. Do the provisions of paragraph (d)(4) adequately address concerns about the receiver's monetary default under the securitization document or repudiation of the transaction?

17. Could transactions be structured on a de-linked basis given the clarification provided in paragraph (d)(4)?

18. Do the provisions of paragraph (e) provide adequate clarification of the receiver's agreement to pay monies due under the securitization until monetary default or repudiation?

VI. Regulatory Procedure

A. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis with a proposed rule, unless the agency certifies that the rule would not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603–605. The FDIC hereby certifies that this proposed rule would not have a significant economic

impact on a substantial number of small entities, as that term applies to insured depository institutions.

B. Paperwork Reduction Act

This proposed rule contains new information collection requirements subject to the Paperwork Reduction Act (PRA). The FDIC will submit a request for review and approval of a collection of information to the Office of Management and Budget (OMB) regulation, 5 CFR 1320.13.

The proposed burden estimates for the applications are as follows:

1. 10K annual report

Non Reg AB Compliant:
Estimated Number of Respondents: 473.
Affected Public: FDIC-insured depository institutions.
Frequency of Response: 1 time per year.
Average time per response: 36 hours.
Estimated Annual Burden: 17,028 hours.

Reg AB Compliant:
Estimated Number of Respondents: 203.
Affected Public: FDIC-insured depository institutions.
Frequency of Response: 1 time per year.
Average time per response: 6 hours.
Estimated Annual Burden: 1,218 hours.

2. 8K—Disclosure Form

Non Reg AB Compliant:
Estimated Number of Respondents: 473.
Affected Public: FDIC-insured depository institutions.
Frequency of Response: 2 times per year.
Estimated Number of Annual Responses: 946.
Average time per response: 6 hours.
Estimated Annual Burden: 5,676 hours.

Reg AB Compliant:
Estimated Number of Respondents: 203.
Affected Public: FDIC-insured depository institutions.
Frequency of Response: 2 times per year.
Estimated Number of Annual Responses: 406.
Average time per response: 1 hour.
Estimated Annual Burden: 406 hours.

3. 10D Reports

Non Reg AB Compliant:
Estimated Number of Respondents: 473.
Affected Public: FDIC-insured depository institutions.
Frequency of Response: 5 times per year.
Estimated Number of Annual Responses: 2,365.
Average time per response: 36 hours.
Estimated Annual Burden: 85,140 hours.

Reg AB Compliant:
Estimated Number of Respondents: 203.
Affected Public: FDIC-insured depository institutions.
Frequency of Response: 5 times per year.
Estimated Number of Annual Responses: 1,015.
Average time per response: 36 hours.
Estimated Annual Burden: 36,540 hours.

The FDIC invites the general public to comment on: (1) Whether this collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (2) the accuracy of the estimates of the burden of the information collection, including the validity of the methodologies and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and (5) estimates of capital or start up costs, and costs of operation, maintenance and purchase of services to provide the information. In the interim, interested parties are invited to submit written comments by any of the following methods. All comments should refer to the name and number of the collection:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html.*
- *E-mail: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Gary A. Kuiper (202–898–3877), Counsel, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

A copy of the comments may also be submitted to the OMB Desk Officer for the FDIC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

List of Subjects in 12 CFR 360.6

Banks, Banking, Bank deposit insurance, Holding companies, National banks, Participations, Reporting and recordkeeping requirements, Savings associations, Securitizations.

For the reasons stated above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 continues to read as follows:

Authority: 12 U.S.C. 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub. L. 101–73, 103 Stat. 357.

2. Revise § 360.6 to read as follows:

§ 360.6 Treatment of financial assets transferred in connection with a securitization or participation.

(a) *Definitions.* (1) *Financial asset* means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

(2) *Investor* means a person or entity that owns an obligation issued by an issuing entity.

(3) *Issuing entity* means an entity created at the direction of a sponsor that owns a financial asset or financial assets or has a perfected security interest in a financial asset or financial assets and issues obligations supported by such asset or assets. Issuing entities may include, but are not limited to, corporations, partnerships, trusts, and limited liability companies and are commonly referred to as special purpose vehicles or special purpose entities. To the extent a securitization is structured as a two-step transfer, the term issuing entity would include both the issuer of the obligations and any intermediate entities that may be a transferee.

(4) *Monetary default* means a default in the payment of principal or interest when due following the expiration of any cure period.

(5) *Obligation* means a debt or equity (or mixed) beneficial interest or security that is primarily serviced by the cash flows of one or more financial assets or financial asset pools, either fixed or revolving, that by their terms convert into cash within a finite time period, or upon the disposition of the underlying financial assets, any rights or other assets designed to assure the servicing or timely distributions of proceeds to the security holders issued by an issuing entity. The term does not include any instrument that evidences ownership of

the issuing entity, such as LLC interests, common equity, or similar instruments.

(6) *Participation* means the transfer or assignment of an undivided interest in all or part of a financial asset, that has all of the characteristics of a "participating interest," from a seller, known as the "lead," to a buyer, known as the "participant," without recourse to the lead, pursuant to an agreement between the lead and the participant. "Without recourse" means that the participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation.

(7) *Securitization* means the issuance by an issuing entity of obligations for which the investors are relying on the cash flow or market value characteristics and the credit quality of transferred financial assets (together with any external credit support permitted by this section) to repay the obligations.

(8) *Servicer* means any entity responsible for the management or collection of some or all of the financial assets on behalf of the issuing entity or making allocations or distributions to holders of the obligations, including reporting on the overall cash flow and credit characteristics of the financial assets supporting the securitization to enable the issuing entity to make payments to investors on the obligations.

(9) *Sponsor* means a person or entity that organizes and initiates a securitization by transferring financial assets, either directly or indirectly, including through an affiliate, to an issuing entity, whether or not such person owns an interest in the issuing entity or owns any of the obligations issued by the issuing entity.

(10) *Transfer* means:

(i) The conveyance of a financial asset or financial assets to an issuing entity; or

(ii) The creation of a security interest in such asset or assets for the benefit of the issuing entity.

(b) *Coverage.* This section shall apply to securitizations that meet the following criteria:

(1) *Capital structure and financial assets.* The documents creating the securitization must clearly define the payment structure and capital structure of the transaction.

(i) The following requirement applies to all securitizations:

(A) The securitization shall not consist of re-securitizations of obligations or collateralized debt obligations unless the disclosures required in paragraph (b)(2) of this section are available to investors for the underlying assets supporting the securitization at initiation and while obligations are outstanding; and

(B) The payment of principal and interest on the securitization obligation must be primarily based on the performance of financial assets that are transferred to the issuing entity and, except for interest rate or currency mismatches between the financial assets and the obligations, shall not be contingent on market or credit events that are independent of such financial assets. The securitization may not be an unfunded securitization or a synthetic transaction.

(ii) The following requirements apply only to securitizations in which the financial assets include any residential mortgage loans:

(A) The capital structure of the securitization shall be limited to no more than six credit tranches and cannot include "sub-tranches," grantor trusts or other structures. Notwithstanding the foregoing, the most senior credit tranche may include time-based sequential pay or planned amortization sub-tranches; and

(B) The credit quality of the obligations cannot be enhanced at the issuing entity or pool level through external credit support or guarantees. However, the temporary payment of principal and/or interest may be supported by liquidity facilities, including facilities designed to permit the temporary payment of interest following appointment of the FDIC as conservator or receiver. Individual financial assets transferred into a securitization may be guaranteed, insured or otherwise benefit from credit support at the loan level through mortgage and similar insurance or guarantees, including by private companies, agencies or other governmental entities, or government-sponsored enterprises, and/or through co-signers or other guarantees.

(2) *Disclosures.* The documents shall require that the sponsor, issuing entity, and/or servicer, as appropriate, shall make available to investors, information describing the financial assets, obligations, capital structure, compensation of relevant parties, and relevant historical performance data as follows:

(i) The following requirements apply to all securitizations:

(A) The documents shall require that, prior to issuance of obligations and monthly while obligations are outstanding, information about the obligations and the securitized financial assets shall be disclosed to all potential investors at the financial asset or pool level, as appropriate for the financial assets, and security-level to enable evaluation and analysis of the credit risk and performance of the obligations and financial assets. The documents shall require that such information and its disclosure, at a minimum, shall comply with the requirements of Securities and Exchange Commission Regulation AB, 17 CFR 229.1100 through 229.1123, or any successor disclosure requirements for public issuances, even if the obligations are issued in a private placement or are not otherwise required to be registered. Information that is unknown or not available to the sponsor or the issuer after reasonable investigation may be omitted if the issuer includes a statement in the offering documents disclosing that the specific information is otherwise unavailable;

(B) The documents shall require that, prior to issuance of obligations, the structure of the securitization and the credit and payment performance of the obligations shall be disclosed, including the capital or tranche structure, the priority of payments and specific subordination features; representations and warranties made with respect to the financial assets, the remedies for and the time permitted for cure of any breach of representations and warranties, including the repurchase of financial assets, if applicable; liquidity facilities and any credit enhancements permitted by this rule, any waterfall triggers or priority of payment reversal features; and policies governing delinquencies, servicer advances, loss mitigation, and write-offs of financial assets;

(C) The documents shall require that while obligations are outstanding, the issuing entity shall provide to investors information with respect to the credit performance of the obligations and the financial assets, including periodic and cumulative financial asset performance data, delinquency and modification data for the financial assets, substitutions and removal of financial assets, servicer advances, as well as losses that were allocated to such tranche and remaining balance of financial assets supporting such tranche, if applicable; and the percentage of each tranche in relation to the securitization as a whole; and

(D) In connection with the issuance of obligations, the nature and amount of compensation paid to the originator, sponsor, rating agency or third-party advisor, any mortgage or other broker, and the servicer(s), and the extent to which any risk of loss on the underlying assets is retained by any of them for such securitization shall be disclosed.

The securitization documents shall require the issuer to provide to investors while obligations are outstanding any changes to such information and the amount and nature of payments of any deferred compensation or similar arrangements to any of the parties.

(ii) The following requirements apply only to securitizations in which the financial assets include any residential mortgage loans:

(A) Prior to issuance of obligations, sponsors shall disclose loan level information about the financial assets including, but not limited to, loan type, loan structure (for example, fixed or adjustable, resets, interest rate caps, balloon payments, etc.), maturity, interest rate and/or Annual Percentage Rate, and location of property; and

(B) Prior to issuance of obligations, sponsors shall affirm compliance with all applicable statutory and regulatory standards for origination of mortgage loans, including that the mortgages are underwritten at the fully indexed rate relying on documented income, and comply with existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such additional guidance applicable at the time of loan origination. Sponsors shall disclose a third party due diligence report on compliance with such standards and the representations and warranties made with respect to the financial assets; and

(C) The documents shall require that prior to issuance of obligations and while obligations are outstanding, servicers shall disclose any ownership interest by the servicer or an affiliate of the servicer in other whole loans secured by the same real property that secures a loan included in the financial asset pool. The ownership of an obligation, as defined in this regulation, shall not constitute an ownership interest requiring disclosure.

(3) *Documentation and recordkeeping.* The documents creating the securitization must clearly define the respective contractual rights and responsibilities of all parties and include the requirements described below and use as appropriate any available standardized documentation for each different asset class.

(i) The following requirements apply to all securitizations:

(A) The documents shall set forth all necessary rights and responsibilities of the parties, including but not limited to representations and warranties and ongoing disclosure requirements, and any measures to avoid conflicts of interest. The contractual rights and responsibilities of each party to the transaction, including but not limited to the originator, sponsor, issuing entity, servicer, and investors, must provide sufficient authority for the parties to fulfill their respective duties and exercise their rights under the contracts and clearly distinguish between any multiple roles performed by any party.

(ii) The following requirements apply only to securitizations in which the financial assets include any residential mortgage loans:

(A) Servicing and other agreements must provide servicers with full authority, subject to contractual oversight by any master servicer or oversight advisor, if any, to mitigate losses on financial assets consistent with maximizing the net present value of the financial asset. Servicers shall have the authority to modify assets to address reasonably foreseeable default, and to take such other action necessary to maximize the value and minimize losses on the securitized financial assets applying industry best practices for asset management and servicing. The documents shall require the servicer to act for the benefit of all investors, and not for the benefit of any particular class of investors. The servicer must commence action to mitigate losses no later than ninety (90) days after an asset first becomes delinquent unless all delinquencies on such asset have been cured. A servicer must maintain sufficient records of its actions to permit appropriate review; and

(B) The servicing agreement shall not require a primary servicer to advance delinquent payments of principal and interest for more than three payment periods, unless financing or reimbursement facilities are available, which may include, but are not limited to, the obligations of the master servicer or issuing entity to fund or reimburse the primary servicer, or alternative reimbursement facilities. Such "financing or reimbursement facilities" under this paragraph shall not depend on foreclosure proceeds.

(4) *Compensation.* The following requirements apply only to securitizations in which the financial assets include any residential mortgage loans. Compensation to parties involved in the securitization of such financial assets must be structured to provide incentives for sustainable credit and the long-term performance of the financial assets and securitization as follows:

(i) The documents shall require that any fees or other compensation for services payable to credit rating agencies or similar third-party evaluation companies shall be payable, in part, over the five (5) year period after the first issuance of the obligations based on the performance of surveillance services and the performance of the financial assets, with no more than sixty (60) percent of the total estimated compensation due at closing; and

(ii) Compensation to servicers shall provide incentives for servicing, including payment for loan restructuring or other loss mitigation activities, which maximizes the net present value of the financial assets. Such incentives may include payments for specific services, and actual expenses, to maximize the net present value or a structure of incentive fees to maximize the net present value, or any combination of the foregoing that provides such incentives.

(5) *Origination and Retention Requirements.* (i) The following requirements apply to all securitizations:

(A) The sponsor must retain an economic interest in a material portion, defined as not less than five (5) percent, of the credit risk of the financial assets. This retained interest may be either in the form of an interest of not less than five (5) percent in each of the credit tranches sold or transferred to the investors or in a representative sample of the securitized financial assets equal to not less than five (5) percent of the principal amount of the financial assets at transfer. This retained interest may not be transferred or hedged during the term of the securitization.

(ii) The following requirements apply only to securitizations in which the financial assets include any residential mortgage loans:

(A) The documents shall require the establishment of a reserve fund equal to at least five (5) percent of the cash proceeds of the securitization payable to the sponsor to cover the repurchase of any financial assets required for breach of representations and warranties. The balance of such fund, if any, shall be released to the sponsor one year after the date of issuance.

(B) The assets shall have been originated in compliance with all statutory, regulatory, and originator underwriting standards in effect at the time of origination. Residential mortgages included in the securitization shall be underwritten at the fully indexed rate, based upon the borrowers' ability to repay the mortgage according to its terms, and rely on documented income and comply with all existing supervisory guidance governing the underwriting of residential mortgages, including the Interagency Guidance on

Non-Traditional Mortgage Products, October 5, 2006, and the Interagency Statement on Subprime Mortgage Lending, July 10, 2007, and such additional regulations or guidance applicable to insured depository institutions at the time of loan origination. Residential mortgages originated prior to the issuance of such guidance shall meet all supervisory guidance governing the underwriting of residential mortgages then in effect at the time of loan origination.

(c) *Other requirements.* (1) The transaction should be an arms length, bona fide securitization transaction, and the obligations shall not be sold to an affiliate or insider;

(2) The securitization agreements are in writing, approved by the board of directors of the bank or its loan committee (as reflected in the minutes of a meeting of the board of directors or committee), and have been, continuously, from the time of execution in the official record of the bank;

(3) The securitization was entered into in the ordinary course of business, not in contemplation of insolvency and with no intent to hinder, delay or defraud the bank or its creditors;

(4) The transfer was made for adequate consideration;

(5) The transfer and/or security interest was properly perfected under the UCC or applicable state law;

(6) The transfer and duties of the sponsor as transferor must be evidenced in a separate agreement from its duties, if any, as servicer, custodian, paying agent, credit support provider or in any capacity other than the transferor; and

(7) The sponsor shall separately identify in its financial asset data bases the financial assets transferred into any securitization and maintain an electronic or paper copy of the closing documents for each securitization in a readily accessible form, a current list of all of its outstanding securitizations and issuing entities, and the most recent Form 10–K, if applicable, or other periodic financial report for each securitization and issuing entity. To the extent the sponsor serves as servicer, custodian or paying agent provider for the securitization, the sponsor shall not comingle amounts received with respect to the financial assets with its own assets except for the time necessary to clear any payments received and in no event greater than a two day period. The sponsor shall make these records readily available for review by the FDIC promptly upon written request.

(d) Safe harbor. (1) *Participations.* With respect to transfers of financial assets made in connection with participations, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets provided that such transfer satisfies the conditions for sale accounting treatment set forth by generally accepted accounting principles, except for the "legal isolation" condition that is addressed by this paragraph.

(2) *Transition period safe harbor.* With respect to any participation or securitization for which transfers of financial assets were made or, for revolving trusts, for which obligations were issued, on or before September 30, 2010, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership any such transferred financial assets notwithstanding that such transfer does not satisfy all conditions for sale accounting treatment under generally accepted accounting principles as effective for reporting periods after November 15, 2009, provided that such transfer satisfied the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods before November 15, 2009, except for the "legal isolation" condition that is addressed by this paragraph (d)(2) and the transaction otherwise satisfied the provisions of this section (Rule 360.6) in effect prior to [EFFECTIVE DATE OF FINAL RULE].

(3) *For securitizations meeting sale accounting requirements.* With respect to any securitization for which transfers of financial assets were made, or for revolving trusts for which obligations were issued, after September 30, 2010, and which complies with the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section, the FDIC as conservator or receiver shall not, in the exercise of its statutory authority to disaffirm or repudiate contracts, reclaim, recover, or recharacterize as property of the institution or the receivership such transferred financial assets, provided that such transfer satisfies the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods after November 15, 2009, except for the "legal isolation" condition that is addressed by this paragraph (d)(3).

(4) *For securitization not meeting sale accounting requirements.* With respect to any securitization for which transfers of financial assets made, or for revolving trusts for which obligations were issued, after September 30, 2010, and which complies with the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section, but where the transfer does not satisfy the conditions for sale accounting treatment set forth by generally accepted accounting principles in effect for reporting periods after November 15, 2009:

(i) *Monetary default.* If at any time after appointment, the FDIC as conservator or receiver is in a monetary default under a securitization, as defined above, and remains in monetary default for ten (10) business days after actual delivery of a written request to the FDIC pursuant to paragraph (f) of this section hereof to exercise contractual rights because of such monetary default, the FDIC hereby consents pursuant to 12 U.S.C. 1821(e)(13)(C) to the exercise of any contractual rights, including obtaining possession of the financial assets, exercising self-help remedies as a secured creditor under the transfer agreements, or liquidating properly pledged financial assets by commercially reasonable and expeditious methods taking into account existing market conditions, provided no involvement of the receiver or conservator is required. The consent to the exercise of such contractual rights shall serve as full satisfaction of the obligations of the insured depository institution in conservatorship or receivership and the FDIC as conservator or receiver for all amounts due.

(ii) *Repudiation.* If the FDIC as conservator or receiver of an insured depository institution provides a written notice of repudiation of the securitization agreement pursuant to which the financial assets were transferred, and the FDIC does not pay damages, defined below, within ten (10) business days following the effective date of the notice, the FDIC hereby consents pursuant to 12 U.S.C. 1821(e)(13)(C) to the exercise of any contractual rights, including obtaining possession of the financial assets, exercising self-help remedies as a secured creditor under the transfer agreements, or liquidating properly pledged financial assets by commercially reasonable and expeditious methods taking into account existing market conditions, provided no involvement of the receiver or conservator is required. For purposes of this paragraph, the damages due shall be in an amount equal to the par value

of the obligations outstanding on the date of receivership less any payments of principal received by the investors to the date of repudiation. Upon receipt of such payment, the investor's lien on the financial assets shall be released.

(e) *Consent to certain actions.* During the stay period imposed by 12 U.S.C. 1821(e)(13)(C), and during the periods specified in paragraph (d)(4)(i) of this section prior to any payment of damages or consent pursuant to 12 U.S.C. 1821(e)(13)(C) to the exercise of any contractual rights, the FDIC as conservator or receiver of the sponsor consents to the making of required payments to the investors in accordance with the securitization documents, except for provisions that take effect upon the appointment of the receiver or conservator, and to any servicing activity required in furtherance of the securitization (subject to the FDIC's rights to repudiate such agreements) with respect to the financial assets included in securitizations that meet the requirements applicable to that securitization as set forth in paragraphs (b) and (c) of this section.

(f) *Notice for consent.* Any party requesting the FDIC's consent as conservator or receiver under 12 U.S.C. 1821(e)(13)(C) pursuant to paragraph (d)(4)(i) of this section shall provide notice to the Deputy Director, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, 550 17th Street, NW., F–7076, Washington DC 20429–0002, and a statement of the basis upon which such request is made, and copies of all documentation supporting such request, including without limitation a copy of the applicable agreements and of any applicable notices under the contract.

(g) *Contemporaneous requirement.* The FDIC will not seek to avoid an otherwise legally enforceable agreement that is executed by an insured depository institution in connection with a securitization or in the form of a participation solely because the agreement does not meet the "contemporaneous" requirement of 12 U.S.C. 1821(d)(9), 1821(n)(4)(I), or 1823(e).

(h) *Limitations.* The consents set forth in this section do not act to waive or relinquish any rights granted to the FDIC in any capacity, pursuant to any other applicable law or any agreement or contract except the securitization transfer agreement or any relevant security agreements. Nothing contained in this section alters the claims priority of the securitized obligations.

(i) *No waiver.* This section does not authorize, and shall not be construed as authorizing the waiver of the prohibitions in 12 U.S.C. 1825(b)(2) against levy, attachment, garnishment, foreclosure, or sale of property of the FDIC, nor does it authorize nor shall it be construed as authorizing the attachment of any involuntary lien upon the property of the FDIC. Nor shall this section be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically mentioned, including but not limited to any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(j) *No assignment.* The right to consent under 12 U.S.C. 1821(e)(13)(C) may not be assigned or transferred to any purchaser of property from the FDIC, other than to a conservator or bridge bank.

(k) *Repeal.* This section may be repealed by the FDIC upon 30 days notice provided in the **Federal Register,** but any repeal shall not apply to any issuance made in accordance with this section before such repeal.

By order of the Board of Directors.

Dated at Washington, DC, this 11th day of May, 2010.

Robert E. Feldman,

Executive Secretary, Federal Deposit Insurance Corporation.

[FR Doc. 2010–11680 Filed 5–14–10; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0499; Directorate Identifier 2010–NE–06–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier-Rotax GmbH 912 F Series and 912 S Series Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

> Due to high fuel pressure, caused by exceeding pressure in front of the mechanical fuel pump (e.g. due to an electrical fuel pump), in limited cases a deviation in the fuel supply could occur. This can result in exceeding of the fuel pressure and might cause engine malfunction and/or massive fuel leakage.

We are proposing this AD to prevent the pump from exceeding the fuel pressure, which could result in engine malfunction or a massive fuel leak. These conditions could cause loss of control of the airplane or a fire.

DATES: We must receive comments on this proposed AD by July 1, 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 BRP–Rotax GmbH & Co. KG, Welser Strasse 32, A–4623 Gunskirchen, Austria, or go to: *http://www.rotax-aircraft-engines.com/*, 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: Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: tara.chaidez@faa.gov*; telephone (781) 238–7773; 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–2010–0499; Directorate Identifier 2010–NE–06–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2007–0060R1–E, dated April 20, 2007 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> Due to high fuel pressure, caused by exceeding pressure in front of the mechanical fuel pump (e.g. due to an electrical fuel pump), in limited cases a deviation in the fuel supply could occur. This can result in exceeding of the fuel pressure and might cause engine malfunction and/or massive fuel leakage.

If the operator has shown compliance with BRP Rotax ASB–912–053, dated February 20, 2007, as mandated by EASA Airworthiness Directive 2007–0060–E, no further action is required.

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

Relevant Service Information

Rotax Aircraft Engines has issued Service Bulletin SB–912–053, dated April 13, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 50 products of U.S. registry. We also estimate that it would take about 0.5 work-hour per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $650 per product. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $34,625.

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, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier-Rotax GmbH (Formerly Motorenfabrik): Docket No. FAA–2010–0499; Directorate Identifier 2010–NE–06–AD.

Comments Due Date

(a) We must receive comments by July 1, 2010.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Bombardier-Rotax 912 F series and 912 S series reciprocating engines with fuel pumps, part numbers (P/Ns) 892230, 892232, 892540 (standard version) or P/Ns 892235, 892236, 892545 (version including flexible fuel line), installed. These engines are installed on, but not limited to, Diamond (formerly HOAC) HK–36R Super Dimona, Aeromot AMT–200S Super Ximango; Diamond DA20–A1 Katana; Scheibe SF 25C; Iniziative Industriali Italiane S.p.A. Sky Arrow 650 TC, and 650 TCN 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. The MCAI describes the unsafe condition as:

Due to high fuel pressure, caused by exceeding pressure in front of the mechanical fuel pump (e.g. due to an electrical fuel pump), in limited cases a deviation in the fuel supply could occur. This can result in exceeding of the fuel pressure and might

cause engine malfunction and/or massive fuel leakage.

We are issuing this AD to prevent the pump from exceeding the fuel pressure, which could result in engine malfunction or a massive fuel leak. These conditions could cause loss of control of the airplane or a fire.

Actions and Compliance

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

(1) At the next maintenance, or within the next 25 hours of engine operation, whichever occurs first, after the effective date of this AD, remove affected fuel pumps, P/Ns 892230, 892232, 892235, 892236, 892540, or 892545.

(2) After the effective date of this AD, do not install fuel pump, P/Ns 892230, 892232, 892235, 892236, 892540, or 892545, on any engine.

FAA AD Differences

(f) This AD differs from the MCAI and/or service information as follows: The MCAI requires replacing an affected fuel pump with fuel pump, P/N 892542 or 892546. This AD requires replacement of an affected fuel pump with a fuel pump eligible for installation on the airplane.

Other FAA AD Provisions

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

Related Information

(h) Refer to MCAI Airworthiness Directive 2007—0060R1—E, dated April 20, 2007, and Rotax Aircraft Engines Service Bulletin SB–912–053, dated April 13, 2007, for related information. Contact BRP–Rotax GmbH & Co. KG, Welser Strasse 32, A–4623 Gunskirchen, Austria, or go to: *http://www.rotax-aircraft-engines.com/*, for a copy of this service information.

(i) Contact Tara Chaidez, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: tara.chaidez@faa.gov;* telephone (781) 238–7773; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on May 10, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–11643 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0245; Directorate Identifier 2010–NE–15–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. PW615F–A Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

A PW617F–E engine powered twin engined aircraft had recently experienced an uncommanded power reduction on one of its engines. Investigation showed that the Fuel Filter Bypass Valve poppet in the Fuel Oil Heat Exchanger (FOHE) on that engine had worn through the housing seat, allowing unfiltered fuel and debris to contaminate the Fuel Metering Unit (FMU), resulting in fuel flow drop and subsequent power reduction. Pratt & Whitney Canada Corp. has confirmed that this is a dormant failure that could result in an unsafe condition.

The PW615F–A engine Fuel Filter Bypass Valve is very similar to that of PW617F–E, but so far there have been no operational abnormalities reported due to subject valve failure on PW615F–A engines. However, evaluation by Pratt & Whitney Canada Corp. has confirmed similar dormant failure of worn through poppets of the subject valve on some 615F–A engine installations, which could affect both engines at the same time on an aircraft and may result in an unsafe condition.

We are proposing this AD to prevent uncommanded power reduction, which could result in the inability to continue safe flight and safe landing.

DATES: We must receive comments on this proposed AD by July 1, 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 Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; telephone 800–268–8000; fax 450–647–2888; *Web site:* www.pwc.ca; 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: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; *e-mail: ian.dargin@faa.gov;* telephone (781) 238–7178; 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–2010–0245; Directorate Identifier 2010–NE–15–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

Transport Canada, which is the aviation authority for Canada, has issued Canada AD CF–2010–03, dated January 20, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

A PW617F–E engine powered twin engined aircraft had recently experienced an uncommanded power reduction on one of its engines. Investigation showed that the Fuel Filter Bypass Valve poppet in the FOHE on that engine had worn through the housing seat, allowing unfiltered fuel and debris to contaminate the FMU, resulting in fuel flow drop and subsequent power reduction. Pratt & Whitney Canada Corp. has confirmed that this is a dormant failure that could result in an unsafe condition.

The PW615F–A engine Fuel Filter Bypass Valve is very similar to that of PW617F–E, but so far there have been no operational abnormalities reported due to subject valve failure on PW615F–A engines. However, evaluation by Pratt & Whitney Canada Corp. has confirmed similar dormant failure of worn through poppets of the subject valve on some 615F–A engine installations, which could affect both engines at the same time on an aircraft and may result in an unsafe condition.

On December 9, 2009, Pratt & Whitney Canada Corp. issued an ASB No. PW600–72–A63071 that introduced a new Fuel Filter Bypass Valve Assembly with an improved design poppet to help alleviate the subject poppet wear problem. This AD is issued to mandate replacement of FOHE Fuel Filter Bypass Valve on all PW615F–A engines as per the Pratt & Whitney Canada Corp. ASB No. PW600–72–A63071 instructions.

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

Relevant Service Information

Pratt & Whitney Canada Corp. has issued ASB No. PW600–72–A63071, Revision 1, dated January 7, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Canada and is approved for operation in the United States. Pursuant to our bilateral agreement with Canada, 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 Transport Canada 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 FOHE fuel filter bypass poppet valve with a larger fuel filter bypass poppet valve within 25 hours of the effective date of the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 378 engines installed on airplanes of U.S. registry. We also estimate that it would take about 3.5 work-hours per engine to comply with this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $22,582 per engine. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $8,648,451.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney Canada Corp. (formerly Pratt & Whitney Canada, Inc.): Docket No. FAA–2010–0245; Directorate Identifier 2010–NE–15–AD.

Comments Due Date

(a) We must receive comments by July 1, 2010.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney Canada Corp. PW615F–A turbofan engines with fuel/oil heat exchanger (FOHE) part number (P/N) 35C3778–01 or P/N 35C3778–02 installed. These engines are installed on, but not limited to, Cessna 510 (Mustang) 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. The MCAI describes the unsafe condition as:

A PW617F–E engine powered twin engined aircraft had recently experienced an uncommanded power reduction on one of its engines. Investigation showed that the Fuel Filter Bypass Valve poppet in the FOHE on that engine had worn through the housing seat, allowing unfiltered fuel and debris to contaminate the Fuel Metering Unit, resulting in fuel flow drop and subsequent power reduction. Pratt & Whitney Canada Corp. has confirmed that this is a dormant failure that could result in an unsafe condition.

The PW615F–A engine Fuel Filter Bypass Valve is very similar to that of PW617F–E, but so far there have been no operational abnormalities reported due to subject valve failure on PW615F–A engines. However,

evaluation by Pratt & Whitney Canada Corp. has confirmed similar dormant failure of worn through poppets of the subject valve on some 615F–A engine installations, which could affect both engines at the same time on an aircraft and may result in an unsafe condition.

We are issuing this AD to prevent uncommanded power reduction, which could result in the inability to continue safe flight and safe landing.

Actions and Compliance

(e) Unless already done, replace the FOHE fuel filter bypass poppet valve with a larger fuel filter bypass poppet valve within 25 hours of the effective date of the AD. Use paragraph 3.A. of the Accomplishment Instructions of Pratt & Whitney Canada Corp. ASB No. PW600–72–A63071, Revision 1, dated January 7, 2010, to do the replacement.

Previous Credit

(f) A fuel filter bypass poppet valve replacement performed before the effective date of this AD using Pratt & Whitney Canada Corp. ASB No. PW600–72–A63071, dated December 9, 2009, satisfies the replacement requirement of this AD.

Alternative Methods of Compliance

(g) 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

(h) Refer to MCAI Transport Canada AD CF–2010–03, dated January 20, 2010, and Pratt & Whitney Canada Corp. ASB No. PW600–72–A63071, Revision 1, dated January 7, 2010, for related information. Contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; telephone 800–268–8000; fax 450–647–2888; *Web site: http://www.pwc.ca,* for a copy of this service information.

(i) Contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; *e-mail: ian.dargin@faa.gov;* telephone (781) 238–7178; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on May 10, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–11644 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0246; Directorate Identifier 2010–NE–16–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Corp. PW617F–E Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

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

A PW617F–E engine powered twin engined aircraft had recently experienced an uncommanded power reduction on one of its engines. Investigation showed that the Fuel Filter Bypass Valve poppet in the Fuel Oil Heat Exchanger (FOHE) on that engine had worn through the housing seat, allowing unfiltered fuel and debris to contaminate the Fuel Metering Unit (FMU), resulting in fuel flow drop and subsequent power reduction.

Pratt & Whitney Canada Corp. issued an Alert Service Bulletin (ASB) No. PW600–72–A66019 to inspect and replace any discrepant valve with the same type new valve. The inspection results confirmed that failure of a worn through poppet is dormant and it can affect both engines at the same time that could result in an unsafe condition on PW617F–E powered aircraft.

We are proposing this AD to prevent uncommanded power reduction, which could result in the inability to continue safe flight and safe landing.

DATES: We must receive comments on this proposed AD by July 1, 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 Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; telephone 800–268–8000; fax 450–647–2888; *Web site: http://www.pwc.ca;* 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: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803; *e-mail: ian.dargin@faa.gov;* telephone (781) 238–7178; 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–2010–0246; Directorate Identifier 2010–NE–16–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

Transport Canada, which is the aviation authority for Canada, has issued Canada AD CF–2010–02, dated January 20, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

A PW617F–E engine powered twin engined aircraft had recently experienced an uncommanded power reduction on one of its engines. Investigation showed that the Fuel Filter Bypass Valve poppet in the FOHE on that engine had worn through the housing seat, allowing unfiltered fuel and debris to contaminate the FMU, resulting in fuel flow drop and subsequent power reduction.

Pratt & Whitney Canada Corp. issued an ASB No. PW600–72–A66019 to inspect and replace any discrepant valve with the same type new valve. The inspection results confirmed that failure of a worn through poppet is dormant and it can affect both engines at the same time that could result in an unsafe condition on PW617F–E powered aircraft.

On November 23, 2009, Pratt & Whitney Canada Corp. issued an ASB No. PW600–72–A66021 that introduced a new fuel Filter Bypass Valve Assembly with an improved design poppet to help alleviate the subject poppet wear problem. This AD is issued to mandate replacement of the FOHE fuel filter bypass valve on all PW617F–E engines as per Pratt & Whitney Canada Corp. ASB No. PW600–72–A66021 instructions.

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

Relevant Service Information

Pratt & Whitney Canada Corp. has issued ASB No. PW600–72–A66021, Revision 1, dated January 7, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of Canada and is approved for operation in the United States. Pursuant to our bilateral agreement with Canada, 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 Transport Canada 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 FOHE fuel filter bypass poppet valve with a larger fuel filter bypass poppet valve within 25 hours of the effective date of the proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 77 engines installed on airplanes of U.S. registry. We also estimate that it would take about 3.5 work-hours per engine to comply with this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $22,582 per engine. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $1,761,722.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Pratt & Whitney Canada Corp. (formerly Pratt & Whitney Canada, Inc.): Docket No. FAA–2010–0246; Directorate Identifier 2010–NE–16–AD.

Comments Due Date

(a) We must receive comments by July 1, 2010.

Affected Airworthiness Directives (ADs)

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney Canada Corp. PW617F–E turbofan engines with fuel/oil heat exchanger (FOHE) part number (P/N) 35C4540–01 installed. These engines are installed on, but not limited to, Empresa Brasileira de Aeronáutica S.A. (EMB) 500 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. The MCAI describes the unsafe condition as:

A PW617F–E engine powered twin engined aircraft had recently experienced an uncommanded power reduction on one of its engines. Investigation showed that the Fuel Filter Bypass Valve poppet in the FOHE on that engine had worn through the housing seat, allowing unfiltered fuel and debris to contaminate the Fuel Metering Unit, resulting in fuel flow drop and subsequent power reduction.

Pratt & Whitney Canada Corp. issued an Alert Service Bulletin (ASB) No. PW600–72–A66019 to inspect and replace any discrepant valve with the same type new valve. The inspection results confirmed that failure of a worn through poppet is dormant and it can affect both engines at the same time that could result in an unsafe condition on PW617F–E powered aircraft.

We are issuing this AD to prevent uncommanded power reduction, which could result in the inability to continue safe flight and safe landing.

Actions and Compliance

(e) Unless already done, replace the FOHE fuel filter bypass poppet valve with a larger fuel filter bypass poppet valve within 25 hours of the effective date of the AD. Use paragraph 3.A. of the Accomplishment Instructions of Pratt & Whitney Canada Corp. ASB No. PW600–72–A66021, Revision 1, dated January 7, 2010, to do the replacement.

Previous Credit

(f) A fuel filter bypass poppet valve replacement performed before the effective date of this AD using Pratt & Whitney Canada Corp. ASB No. PW600–72–A66021, dated November 23, 2009, satisfies the replacement requirement of this AD.

Alternative Methods of Compliance

(g) 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

(h) Refer to MCAI Transport Canada Airworthiness Directive CF–2010–02, dated January 20, 2010, and Pratt & Whitney Canada ASB No. PW600–72–A66021, Revision 1, dated January 7, 2010, for related information. Contact Pratt & Whitney Canada Corp., 1000 Marie-Victorin, Longueuil, Quebec, Canada, J4G 1A1; telephone 800–268–8000; fax 450–647–2888; *Web site: http://www.pwc.ca,* for a copy of this service information.

(i) Contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: ian.dargin@faa.gov;* telephone (781) 238–7178; fax (781) 238–7199, for more information about this AD.

Issued in Burlington, Massachusetts, on May 10, 2010.

Peter A. White,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–11645 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0181; Airspace Docket No. 10–ASW–3]

Proposed Amendment of Class E Airspace; Center, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Center, TX adding additional controlled airspace necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Center Municipal Airport, Center, TX. Adjustments also would be made to the geographic coordinates of the Amason nondirectional beacon (NDB). The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 1, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0181/Airspace Docket No. 10–ASW–3, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; *telephone:* 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0181/Airspace Docket No. 10–ASW–3." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs at Center Municipal Airport, Center, TX. Adjustments to the geographic coordinates of the 9 NDB would be made in accordance with the FAA's National Aerospace Charting Office. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air

navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, 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 promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Center Municipal Airport, Center, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Center, TX [Amended]

Center Municipal Airport, TX
(Lat. 31°49′54″ N., long. 94°09′23″ W.)
Amason NDB
(Lat. 31°49′58″ N., long. 94°09′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Center Municipal Airport and within 2.5 miles each side of the 341° bearing from the Amason NDB extending from the 6.5-mile radius to 7.5 miles northwest of the airport, and within 3.3 miles each side of the 171° bearing from the airport extending from the 6.5-mile radius to 9.8 miles south of the airport.

Issued in Fort Worth, TX, on May 7, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–11709 Filed 5–14–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010 0182; Airspace Docket No. 10–ASW–4]

Proposed Amendment of Class E Airspace; Pauls Valley, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Pauls Valley, OK. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Pauls Valley Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 1, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010 0182/Airspace Docket No. 10–ASW–4, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; *telephone:* 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010 0182/Airspace Docket No. 10–ASW–4." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs at Pauls Valley Municipal Airport, Pauls Valley, OK. Adjustments to the geographic coordinates would be made in

accordance with the FAA's National Aerospace Charting Office. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, 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 promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Pauls Valley Municipal Airport, Pauls Valley, OK.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Pauls Valley, OK [Amended]

Pauls Valley Municipal Airport, OK
(Lat. 34°42′34″ N., long. 97°13′24″ W.)
Pauls Valley NDB
(Lat. 34°42′55″ N., long. 97°13′44″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Pauls Valley Municipal Airport and within 2.6 miles each side of the 169° bearing from the Pauls Valley NDB extending from the 6.6-mile radius to 7.6 miles south of the airport, and within 4 miles each side of the 000° bearing from the airport extending from the 6.6-mile radius to 11.5 miles north of the airport.

Issued in Fort Worth, TX, on May 7, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–11712 Filed 5–14–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0401; Airspace Docket No. 10–AGL–8]

Proposed Amendment of Class E Airspace; Litchfield, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Litchfield, MN. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Litchfield Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 1, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0401/Airspace Docket No. 10–AGL–8, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; *telephone:* 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0401/Airspace Docket No. 10–AGL–8." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://*

www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs at Litchfield Municipal Airport, Litchfield, MN. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, 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 promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Litchfield Municipal Airport, Litchfield, MN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Litchfield, MN [Amended]

Litchfield Municipal Airport, MN
(Lat. 45°05′50″ N., long. 94°30′26″ W.)
Darwin VORTAC
(Lat. 45°05′15″ N., long. 94°27′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Litchfield Municipal Airport, and within 8 miles north and 4 miles south of the Darwin VORTAC 104° radial extending from the 6.3-mile radius to 18.4 miles east of the airport.

Issued in Fort Worth, TX, on May 5, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–11722 Filed 5–14–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0402; Airspace Docket No. 10–AGL–6]

Proposed Amendment of Class E Airspace; Perham, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Perham, MN. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Perham Municipal Airport, Perham, MN. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before July 1, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2010–0402/Airspace Docket No. 10–AGL–6, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd, Fort Worth, TX 76137; 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall

regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2010–0402/Airspace Docket No. 10–AGL–6." The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, 2601 Meacham Blvd, Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14 Code of Federal Regulations (14 CFR) part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs at Perham Municipal Airport, Perham, MN. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, 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 promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Perham Municipal Airport, Perham, MN.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Perham, MN [Amended]

Perham Municipal Airport, MN
(Lat. 46°36′15″ N., long. 95°36′16″ W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of Perham Municipal Airport.

Issued in Fort Worth, TX, on May 4, 2010.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–11742 Filed 5–14–10; 8:45 am]

BILLING CODE 4901–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1120

[Docket No. CPSC–2010–0043]

RIN 3041–AC79

Determination That Children's Upper Outerwear in Sizes 2T to 12 With Neck or Hood Drawstrings and Children's Upper Outerwear in Sizes 2T to 16 With Certain Waist or Bottom Drawstrings Are a Substantial Product Hazard

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") is proposing a rule to specify that children's upper outerwear garments in sizes 2T to 12 or the equivalent that have neck or hood drawstrings, and in sizes 2T to 16 or the equivalent that have waist or bottom drawstrings that do not meet specified criteria, have characteristics that constitute substantial product hazards. Items of children's upper outerwear with these features have been involved in a number of deaths and serious injuries from entanglement of the drawstrings with items such as playground slides, cribs, and school buses. The proposed rule would enhance understanding in the industry about how the Commission views such garments and would facilitate the process of obtaining the appropriate corrective action when such garments are found in commerce.

DATES: Submit comments by August 2, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0043, by any of the following methods:

• *Electronic Submissions.* Submit electronic comments to the Federal eRulemaking Portal: *http://*

www.regulations.gov. Follow the instructions for submitting comments. (To ensure timely processing of comments, the Commission is no longer directly accepting comments submitted by electronic mail (e-mail). The Commission encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.)

• *Written Submissions.* Submit written submissions in the following ways:

a. *FAX:* 301–504–0127.

b. *Mail/Hand delivery/Courier* (for paper, disk, or CD–ROM submissions): Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received, including any personal information provided, may be posted without change to *http://www.regulations.gov.* Accordingly, we recommend that you not submit confidential business information, trade secret information, or other sensitive information that you do not want to be available to the public.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, CPSC 2010–0043, into the "Search" box and follow the prompts.

FOR FURTHER INFORMATION CONTACT:

Technical information: Jonathan Midgett, Division of Human Factors, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7692, e-mail *jmidgett@cpsc.gov. Legal information:* Harleigh Ewell, Office of the General Counsel, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7683; e-mail *hewell@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

1. *The hazard.* Drawstrings in children's upper outerwear can present a hazard if they become entangled with other objects [Ref. 6]. (Documents supporting statements in this notice are identified by [Ref. #], where # is the number of the reference document as listed below in section O of this notice.) Drawstrings in the neck and hood areas of children's upper outerwear present a strangulation hazard when the drawstring becomes caught in objects such as playground slides. Drawstrings in the waist or bottom areas of children's upper outerwear can catch in the doors or other parts of a motor vehicle, thereby presenting a "dragging" hazard when the driver of the vehicle drives off without realizing that someone is attached to the vehicle. The injury data associated with drawstrings is discussed below in section D of this preamble.

2. *Previous industry actions to address the hazard.* In 1994, at the urging of CPSC, a number of manufacturers and retailers agreed to modify or eliminate drawstrings from hoods and necks of children's clothing [Ref. 1]. In 1997, the American Society for Testing and Materials (now ASTM International) addressed the hazards presented by drawstrings on upper outerwear by creating a voluntary consensus standard, ASTM F 1816–97, *Standard Safety Specification for Drawstrings on Children's Upper Outerwear,* to prohibit drawstrings around the hood and neck area of children's upper outerwear in sizes 2T to 12, and also to limit the length of drawstrings around the waist and bottom in sizes 2T to 16 to 3 inches outside the drawstring channel when the garment is expanded to its fullest width. For waist and bottom drawstrings in sizes 2T to 16, toggles, knots, and other attachments at the free ends of drawstrings were prohibited. Further, waist and bottom drawstrings in sizes 2T to 16 that are one continuous string were required to be bartacked, *i.e.,* stitched through to prevent the drawstring from being pulled through its channel. The ASTM standard is copyrighted, but can be viewed as a read-only document, only during the comment period on this proposal, at *http://www.astm.org/cpsc.htm*, by permission of ASTM.

The Commission's staff has estimated that the age range of children who would be likely to wear garments in sizes 2T to 12 is from 18 months to 10 years [Ref. 4]. The age range of children who would be likely to wear garments in sizes 2T to 16 is 18 months to 14 years.

3. *Previous actions by the Commission to address the hazard.* On July 12, 1994, the Commission announced a cooperative effort with a number of manufacturers and retailers that agreed to eliminate or modify drawstrings on the hoods and necks of children's clothing [Ref. 1].

In February 1996, the Commission issued guidelines [Ref. 8] for consumers, manufacturers, and retailers that incorporated the requirements that became ASTM F 1816–97.

On May 12, 2006, the CPSC's Office of Compliance posted a letter [Ref. 2], on CPSC's website, to the manufacturers, importers, and retailers of children's upper outerwear, citing the fatalities and urging them to comply with the industry standard, ASTM F 1816–97. The letter explained that the CPSC staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury under section 15(c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1274(c). Recalls of noncomplying products that were toys or other articles intended for use by children could be sought under that section. (At that time, section 30(d) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2079(d) (2007) provided that a risk that could be regulated under the FHSA could not be regulated under the CPSA unless the Commission, by rule, found that it was in the public interest to regulate the risk under the CPSA. Thus, at that time, a recall would be sought under the authority of section 15 of the FHSA, rather than the similar recall authority under section 15 of the CPSA, discussed below in section A.4 of this preamble. Section 30(d) of the CPSA was repealed by the CPSIA, so that now a recall of a consumer product that is a toy or other article intended for use by children can be sought either under the CPSA, without a finding by rule that it is in the public interest to do so, or under the FHSA.)

The 2006 letter also indicated that the Commission would seek civil penalties if a manufacturer, importer, distributor, or retailer distributed noncomplying children's upper outerwear in commerce and failed to report that fact to the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b) (discussed below in section A.4 of this preamble). From 2006 through 2009, the Commission's staff participated in 78 recalls of noncomplying products with drawstrings and obtained a number of civil penalties based on the failure of firms to report the defective products to CPSC as required by section 15(b) of the CPSA [Ref. 4].

4. *Section 15 of the CPSA.* Section 15 of the CPSA authorizes the CPSC to order corrective actions regarding substantial product hazards. Section 15(a)(2) of the CPSA defines "substantial product hazard" as a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public. The term "defect" is discussed in 16 CFR 1115.4.

Section 15(b)(3) of the CPSA (15 U.S.C. 2064(b)(3)) requires manufacturers, distributors, and retailers of a consumer product or other product over which the Commission has jurisdiction under any act enforced by the Commission (other than motor vehicle equipment as defined in 49 U.S.C. 30102(a)(7)), and which is distributed in commerce, to immediately inform the Commission if they obtain information that reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard under section 15(a)(2) of the CPSA. After giving interested persons an opportunity for a hearing, the Commission may require manufacturers, distributors, and retailers, if in the public interest, to: (1) give notice of the defect to various persons; (2) repair the product; or (3) refund the purchase price. 15 U.S.C. 2064(c) and (d).

Section 15(j) of the CPSA authorizes the Commission to issue rules establishing that defined characteristics of a consumer product that present a risk of injury shall be deemed to be a substantial product hazard if: (1) The characteristics are readily observable; (2) the characteristics have been addressed by voluntary standards; (3) such standards have been effective in reducing the risk of injury; and (4) there is substantial compliance with such standards. These requirements are discussed separately in sections B through E of this preamble below.

B. The Defined Characteristics

As explained above in section A.4 of this preamble, the requirements of the ASTM F 1816–97 voluntary standard to reduce the risk of strangulation or being dragged by a vehicle due to neck, hood, waist, or bottom drawstrings define the characteristics that present the substantial product hazard associated with garments subject to that standard.

C. The Characteristics Are Readily Observable

In the case of drawstrings, all of the requirements of the ASTM voluntary standard can be evaluated with simple physical manipulations of the garment, simple measurements of portions of the garments, and unimpeded visual observation. The Commission concludes that the product characteristics defined by the voluntary standard are readily observable. (The preceding is not intended to be a definition of "readily observable," and more complicated or difficult actions to determine the presence or absence of defined product characteristics also may be consistent with "readily observable." The Commission intends to evaluate this issue on a case-by-case basis.)

D. The Voluntary Standard Has Been Successful in Reducing the Risk of Injury

1. *Hood and neck drawstring incidents.* The CPSC staff examined reports of fatalities and injuries for the age groups whose upper outerwear is subject to the voluntary standard [Ref. 6]. CPSC staff is aware of 56 reports of neck and hood drawstring entanglements between January 1985 and September 2009. Eighteen (32 percent) of these entanglements were fatal. The majority of the entanglements involved a neck or hood drawstring becoming snagged on a slide. Also, in several incidents, a neck or hood drawstring became entangled on parts of a crib. Of the 38 nonfatal neck or hood drawstring incidents involving children in the age range of 18 months to 10 years (the ages estimated to be associated with sizes 2T to 12), 30 incidents resulted in an injury. In the remaining eight incidents, the neck or hood drawstring became snagged or entangled but no injury was reported. The year with the highest number of reported fatalities (three) was 1994. The 3 years with the highest number of reported incidents (including both fatal and nonfatal incidents) were 1992 (11), 1993 (9), and 1994 (9). Slides were associated with 10 of the fatalities, 26 of the injury incidents, and all 8 of the no-injury incidents (jackets or sweatshirts snagged by a hood or neck drawstring on playground slides prior to the child's subsequent escape or rescue).

The specification for drawstrings on children's upper outerwear, ASTM F 1816–97, was approved in June 1997 and published in August 1998. CPSC staff is aware of 12 fatalities and 33 nonfatal incidents during the 12 years (1985–1996) prior to the ASTM standard that involved children aged 18 months to 10 years of age where the neck or hood string of upper outerwear became entangled. On average, this resulted in one reported fatality and about three reported nonfatal incidents a year. In the 8 years for which reporting is complete(1999 through 2006) after ASTM F 1816–97 was published, CPSC staff received reports of two fatal and two nonfatal neck or hood drawstring incidents. (The years 1997 and 1998 are omitted from this comparison because that was the transition period during which the ASTM standard was developed and published.) On average, this is approximately one fatality every 4 years and about one nonfatal entanglement every 4 years. For the years for which reporting is complete, the data show a reduction in the annual average number of reported fatalities after the ASTM standard of 75 percent. The corresponding reduction in the annual average number of reported non-fatal entrapments is 91 percent. It should be noted that CPSC staff continues to receive incident reports for the years 2007 through 2009. CPSC staff is aware of three fatalities and no non-fatal incidents since January 2007. When reporting for 2007–2009 is complete, the percent reduction in the annual average number of reported fatalities associated with neck/hood drawstrings will be at most 55 percent if no additional fatal incidents are reported.

2. *Waist and bottom drawstring incidents.* Between January 1985 and September 2009, CPSC staff is aware of 27 entanglement incidents associated with a waist or bottom drawstring on children's upper outerwear [Ref. 6]. Of these 27 incidents, 8 (30 percent) were fatal, 11 (41 percent) resulted in injuries, and 8 (30 percent) involved snags or entanglements that did not result in an injury. All eight fatalities identified with waist and bottom drawstrings (seven involving a bus and one involving a slide) occurred in the years 1991 through 1996. From 1991 to 1996, there were 19 waist and bottom drawstring incidents, of which 13 involved buses (7 fatalities and 6 nonfatal incidents). CPSC staff is not aware of any bus-related drawstring incidents after 1996. There were seven waist and bottom drawstring incidents from 1999 to the present (all nonfatal), two of which involved children caught on car doors. For years in which reporting is considered complete, the number of reported fatalities associated with waist and bottom drawstrings have fallen from the eight reported fatalities between 1985 and 1996 to zero since adoption of the ASTM voluntary standard in 1997. For the corresponding periods for which reporting is complete (1985 through 1996 and 1999 through 2006), reported nonfatal injuries fell from 11 in 12 years to 6 in 8 years. These data suggest that after the ASTM standard was adopted, for waist and bottom drawstrings the annual average of reported fatalities fell by 100 percent and the annual average of reported nonfatal incidents fell by about 18 percent. Reporting is ongoing for 2007–2009. CPCS staff is not aware of any reported fatalities for this time. Staff has one report of a non-fatal incident occurring between 2007–2009. These numbers may change in the future.

3. *Effectiveness of the voluntary standard.* To the extent that reductions in deaths and injuries are due to

compliance with the voluntary standard, either by eliminating drawstrings altogether or by making them meet the requirements of the standard, the effectiveness of the voluntary standard is likely to be higher than the reductions in reported deaths and injuries indicate. This is because many items of upper outerwear manufactured before the industry widely adopted the ASTM standard, and that had drawstrings that did not comply with that standard, probably remained in use long after the standard was adopted. Based on the injury data, the Commission concludes that the ASTM voluntary standard has been effective in reducing the risk of injury from children's upper outerwear with drawstrings.

E. There Is Substantial Compliance With the Voluntary Standard

In the context of the findings needed for a rule under section 15(j) of the CPSA to deem product characteristics regulated by a voluntary standard to be a substantial product hazard, "substantial compliance" refers to the extent the industry manufacturing and distributing the product complies with the voluntary standard. The issue is what degree of compliance will be deemed "substantial" in a particular situation. Neither section 15(j) of the CPSA nor the legislative history of the CPSIA (which amended the CPSA to add paragraph (j) to section 15 of the CPSA) defines or explains what constitutes substantial compliance.

The Commission notes, however, that the term "substantial compliance," which is used in section 15(j) of the CPSA, also appears elsewhere in the CPSA, as well as in the Federal Hazardous Substances Act ("FHSA") and the Flammable Fabrics Act ("FFA"), in the context of whether the Commission can issue a mandatory rule addressing a risk that also is addressed by a voluntary standard. Because the provisions in the FHSA and FFA relating to substantial compliance are basically identical to those in the CPSA, only the CPSA is referenced in the following discussion.

Sections 7 and 9 of the CPSA prohibit the Commission from issuing a consumer product safety rule if there is a voluntary standard that passes a two-pronged test: (1) If the voluntary standard were universally complied with, it would adequately reduce, or eliminate, the unreasonable risk of injury that would be addressed by the rule; and (2) there will be substantial compliance with the voluntary standard. Failure of a voluntary standard to meet either prong of this test allows the Commission to issue a mandatory standard. The use of the concept of "substantial compliance" as a finding that can determine whether a mandatory consumer product safety rule can be issued will be referred to in this preamble as the "rulemaking context."

The most comprehensive explanation of the Commission's views on substantial compliance in the rulemaking context is in the findings the Commission made in issuing the Safety Standard for Bunk Beds, 16 CFR parts 1213, 1500, and 1513. Those findings are codified in appendices to 16 CFR parts 1213 and 1513 and state, in relevant part, that the Commission does not believe that there is any single percentage of conforming products that can be used in all cases to define "substantial compliance." Instead, the percentage must be viewed in the context of the hazard the product presents, and the Commission must examine what constitutes substantial compliance with a voluntary standard in light of its obligation to safeguard the American consumer.

The findings in the rulemaking for bunk beds discuss a number of factors that the Commission should consider in the rulemaking context in determining whether there is substantial compliance. Factors that may influence the Commission to conclude that a mandatory standard is needed and that there is not substantial compliance include that:

- The risk is severe;
- No intervening action is required to create the risk;
- The risk targets a vulnerable population, such as children;
- The product has a long life and thus might be passed on to other children; and
- The product can be made relatively easily by very small companies.

See, e.g., Appendix to 16 CFR part 1213.

In the context of a rule under section 15(j) of the CPSA, the same factors would argue that the Commission should find substantial compliance, in order that the public be protected by the issuance of the rule.

Table 1 (below) shows information about the CPSC recalls for the years 2006 through 2009. The number of cases related to recalls of children's upper outerwear garments with drawstrings numbered 78 for that period, involving about 2 million units.

The number of recalls in 2008 and 2009 was more than the number of recalls in 2006 and 2007; however, the annual average number of outerwear garments recalled in 2006 and 2007 (about 650,000) was about 75 percent greater than the annual average number recalled in 2008 and 2009 (about 377,000).

TABLE 1—CPSC OFFICE OF COMPLIANCE RECALLS DRAWSTRINGS ON CHILDREN'S UPPER OUTERWEAR 2006–2009

Year	Number of recall cases	Number of units of upper outerwear recalled
2006	17	676,597
2007	14	626,172
2008	24	227,868
2009	23	526,193
Total	78	2,056,830

Source: Communication from CPSC Office of Compliance, March 18, 2010.

Using population data, garment sizing information, and assumptions about purchase and use, one can calculate the number of units recalled as a proportion of sales. This calculation provides a rough estimate of the extent of compliance with the voluntary standard.

As explained earlier in section A.2 of this preamble, the voluntary standard applies to sizes 2T to 12 for neck and hood drawstrings and sizes 2T to 16 for drawstrings at the waist and bottom of upper outerwear. Information available to CPSC's staff indicates that a child's age generally matches the child's clothing size or is a year or two below the clothing size [Ref. 4]. For example,

a child 12 years old might wear a size 12 garment or a size 14. Similarly, for smaller sizes, children who are as young as 18 months can be wearing size 2T clothing. Thus, the ages of children wearing size 2T to 12 (the sizes covered by the voluntary standard for upper outerwear with hood or neck drawstrings) would be 18 months to 10 years. The ages of children typically wearing size 2T to 16 (the sizes covered by the voluntary standard for upper outerwear with waist or bottom drawstrings) would be 18 months to 14 years.

For each of the years 2006 through 2009, the population of children ages 18 months to 10 years was about 38 million and the population of children ages 18 months to 14 years was approximately 55 million [Refs. 3, 4].

No numerical data about recent annual sales of children's upper outerwear is available. A press release concerning a 1994 cooperative agreement between CPSC and manufacturers and retailers of children's clothing suggests that annual sales of garments with hood and neck drawstrings was 20 million, although no source for that information is provided [Ref. 1]. However, because one way to comply with the voluntary standard is to eliminate drawstrings entirely, the garments to which the voluntary standard applies include all children's upper outerwear in the specified sizes, not just those with drawstrings.

Given children's growth patterns, it may be that, on average, at least one new piece of upper outerwear is purchased each year for each child. If so, then sales of children's upper outerwear could total the population of children who wear children's sizes 2T to 16, or at least 55 million.

Given these assumptions, and assuming that all violative items of children's upper outerwear were recalled in the years 2006 through 2009, it would appear that the percentage of children's upper outerwear garments sold in those years that complied with the drawstring requirements of ASTM F 1816–97 was in the high-90-percent range. While the number of recalled units in the years 2006 through 2009 totaled about 2 million units, the number of units sold during those 4 years, under the assumptions above, totaled 220 million. Thus, for the period 2006 through 2009, the units recalled by CPSC would account for about 1 percent of all units sold. In other words, given the assumptions noted, there was about 99 percent compliance with the voluntary standard. Even if these assumptions are not entirely accurate, the Commission concludes that the compliance with ASTM F 1816–97 is very high and constitutes substantial compliance as that term is used in section 15(j) of the CPSA.

F. Size and Age Determination Issues

Children's upper outerwear that is labeled with a size in the 2T to 16 numerical size range clearly would be a garment subject to the ASTM F 1816–97 standard. In many cases, however, the garment's label may lack a numerical size, instead using a "small (S), medium (M), or large (L)" sizing system. It is fairly obvious when clothing is small enough for younger children and therefore would be included in the sizes specified in the ASTM standard. In contrast, it is not always apparent which non-numerical sizes correspond to the sizes at the upper end of the ranges in the standard, that is, size 12 and size 16, because styles and sizing systems vary. To determine which of these designations would be equivalent to sizes 2T to 16, the Commission's staff searched internet sites to locate clothing size charts in which firms link children's non-numerical sizes with numerical sizes [Ref. 7]. All of the charts that were located, 31 of which were for girls' apparel and 29 for boys' apparel, were included in the review. For each firm, letter sizes were recorded for boys' and girls' sizes 10 through 18 to explore the overlap in letter sizes one size below and one above the 12 and 16 endpoints in the standard. The number of firms adopting each size equivalence is presented below.

TABLE 2—NUMBER OF FIRMS BY NUMBER AND LETTER SIZE EQUIVALENCY

	Girls					*Boys*				
	S	M	L	XL	XXL	S	M	L	XL	XXL
10	1	23	7	.....	.....	1	21	7	.....	.....
12	.....	17	14	.....	.....	.....	17	11	1	.....
14	.....	.....	21	10	.....	.....	1	19	8	1
16	.....	.....	9	17	1	.....	.....	15	9	.....
18	.....	.....	.....	9	1	.....	.....	1	16	2

As can be seen in the table, firms vary in how they define those sizes. For example, although most firms equate children's size 10 with Medium, some equate size 10 with Small (S) and some with Large (L).

To increase the likelihood that as many products as possible that are subject to the ASTM standard will be included in the applicable size definition while minimizing the overlapping inclusion of products that are not subject to the ASTM standard, the Commission proposes that non-numerical equivalencies for sizes 12 and 16 be based on the size equivalency that is (1) used by a substantial percent of children's apparel firms and (2) does not exclude a substantial percent of firms at a higher size equivalency.

For example, for girls' size 12 apparel, 55 percent of the size equivalencies shown in the chart above equate size 12 to size Medium. However, if Medium and smaller is selected as equivalent to size 12 and smaller, then another 45 percent of size equivalencies (in the Large category) are excluded. Therefore, to ensure that products covered by the standard are included, it appears to be more appropriate to select Large as the upper limit size equivalency for size 12 girls' upper outerwear. For boys size 12, 59 percent of the size equivalencies equate size 12 to Medium, but if that size equivalency is selected, then another 38 percent of size equivalencies (in the Large category) are excluded. Thus, it appears more appropriate to select Large as the upper limit size equivalency for size 12 boys' upper outerwear. While there is another data point showing size 12 equivalent to XL, it would constitute only 3 percent of equivalencies, and therefore it would be possible that products not covered by the standard would be included. Thus, it does not appear reasonable to include that size. Using this approach and based on the table above, the Commission proposes that boys' and girls' size Large (L) should be defined as size 12 and that boys' and girls' sizes Extra-Large (XL) be defined as equivalent to size 16.

The proposed rule also would declare that the number and letter size-

equivalency system used by a particular firm can, at the Commission's option, be used to determine the equivalency of that firm's sizes to the numerical system.

In cases where garment labels give a range of sizes, if the range includes any size that is subject to ASTM F 1816–97, the garment will be considered subject, even if other sizes in the stated range, taken alone, would not be subject. For example, a coat sized 12–14 remains subject to the prohibition of hood and neck area drawstrings, even though the ASTM standard prohibits head and neck drawstrings only in garments up to size 12. On the other hand, a size 13–15 coat would not be considered to be within the scope of the ASTM standard's prohibition of neck and hood drawstrings, but it would be subject to the ASTM standard's requirements for waist or bottom strings.

To address garments for which the lettered sizing system sizes given above are insufficient to determine whether an item of upper outerwear is equivalent to sizes 2T to 16, the Commission's staff considered the possibility of determining garment equivalency on the basis of anthropometric data or a market survey of the actual size of garments marked 2T to 16. It was determined that such efforts were not feasible due to the vagaries of fashion and the varied purposes served by outerwear (*e.g.,* how many layers of clothing will be worn under the garment). The Commission invites comments on how to determine the equivalency of unlabeled or ambiguously labeled garments to sizes 2T to 16.

In cases where the equivalency of a garment's size to the relevant size in the 2T to 16 system is not readily apparent, the Commission's staff will assemble evidence on that issue. The Commission concludes that, once equivalency has been established, the existence of any final rule under section 15(j) of the CPSA applicable to the product will obviate any need for the staff to present additional evidence to establish that the product contains a defect that presents a substantial risk of injury to the public.

G. Description of the Proposed Rule

Elsewhere in this issue of the **Federal Register**, the Commission is publishing a proposed rule to establish a new part 1120, titled, "Substantial Product Hazard List" which would codify the Commission's determinations that certain consumer products or classes of consumer products have characteristics whose existence or absence presents a substantial product hazard. Products that are determined in rules issued under section 15(j) of the CPSA to present a substantial product hazard, such as the rule proposed in this notice for drawstrings, would be listed in a new § 1120.3.

This proposed rule for drawstrings would create a new § 1120.3(b)(1) to specify that items of children's upper outerwear that are subject to ASTM F 1816–97, but that do not comply with it, are substantial product hazards under section 15(a)(2) of the CPSA. The proposal also would create a new § 1120.2(c) to define a "drawstring" as "a non-retractable cord, ribbon, or tape of any material to pull together parts of outerwear to provide for closure."

To facilitate determining which garments that are sized under a sizing system other than the numerical system (2T to 16) would be equivalent to sizes 2T to 16, proposed § 1120.3(b)(2)(i) would provide that garments in girls' size Large (L) and boys' size Large (L) are equivalent to size 12 and proposed § 1120.3(b)(2)(ii) specifies that garments in girls' size Extra-Large (XL) and boys' size Extra-Large (XL) are equivalent to size 16.

Proposed § 1120.3(b)(2)(iii) would provide that if a garment is labeled for a range of sizes, the garment would be considered subject to ASTM F 1816–97 if any size within the range is subject to ASTM F 1816–97. Proposed § 1120.3(b)(2)(iv) would provide that, in order to fall within the scope of § 1120.3(b)(2)(i) through (iii), a garment need not state anywhere on it, or on its tags, labels, package, or any other materials accompanying it, the term "girls" or the term "boys" or whether the garment is intended for girls or boys. In addition, proposed § 1120.3(b)(2)(v) would provide that a size may be considered equivalent to the 2T to 16 range if a manufacturer, importer, distributor, or retailer has stated that it is equivalent. Last, proposed § 1120.3(b)(vi) would state that the Commission may use any other evidence that would tend to show that an item of children's upper outerwear is a size that is equivalent to sizes 2T to 16.

H. Certification

The Commission has received inquiries about whether a product that is subject to a rule under section 15(j) of the CPSA will have to be tested and certified as required by section 14(a) of the CPSA. The answer to that question is "no." Section 14(a) of the CPSA requires that products subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other act enforced by the Commission must be certified as complying with all applicable CPSC-enforced requirements. 15 U.S.C. 2063(a). Such certification must be based on a test of each product or on a reasonable testing program or, for children's products (those designed or intended primarily for children 12 years of age or younger), on tests by a third-party conformity assessment body (also known as a "third-party laboratory") recognized by the Commission. Under section 14(a) of the CPSA, the only type of rule *under the CPSA* that can trigger the requirement for testing and certification is a "consumer product safety rule." Section 3(a)(6) of the CPSA defines a "consumer product safety rule" as "a consumer products safety standard described in section 7(a) [of the CPSA] or a rule under [section 8 of the CPSA] declaring a consumer product a banned hazardous product." A rule under section 15(j) of the CPSA does not fit into either category, so products subject to a rule under section 15(j) of the CPSA are not, for that reason, subject to the testing and certification requirements of section 14(a) of the CPSA. The Commission is aware that section 11(g)(1)(A) of the CPSA, 15 U.S.C. 2060(g)(1)(A), relating to judicial review, refers to a rule issued under section 15(j) of the CPSA as a "consumer product safety rule." However, this provision is limited to judicial review situations and, therefore, does not equate rules under section 15(j) of the CPSA with consumer product safety rules. (Although a rule under section 15(j) of the CPSA does not trigger the requirement for testing and certification, products subject to a rule under section 15(j) of the CPSA may need to be tested and certified if they are subject to *other* CPSC requirements, such as flammability requirements, the lead content requirements in section 101 of the CPSIA, or the phthalate content requirements of section 108 of the CPSIA.)

The Commission understands that retailers may be demanding certification tests to all CPSC requirements applicable to children's products. The discussion above makes it clear that certification to the proposed rule is not required by federal law or this regulation. While certification is not required by law, retailers still have a responsibility to report to the CPSC under section 15(b) with regard to this rule. The Commission believes that because the retailer has an independent reporting obligation to the Commission, it should not be permitted to seek indemnity for a penalty assessed because of its own failure to report. The Commission would consider an agreement to indemnify a retailer for

any civil penalties assessed for a failure to report to be void as against public policy. The Commission seeks comment on this position.

I. Preemption

The Commission has received inquiries about whether a rule under section 15(j) of the CPSA would have the effect of preempting State laws or regulations that are not identical to the requirements of the voluntary standard. Under section 26(a) of the CPSA, 15 U.S.C. 2075(a), if a "consumer product safety standard under [the CPSA]" is in effect and applies to a product, no State or political subdivision of a State may either establish or continue in effect a requirement dealing with the same risk of injury unless the State requirement is identical to the Federal standard. (Section 26(c) of the CPSA provides that States or political subdivisions of States may apply to the Commission for an exemption from this preemption under certain circumstances.) As discussed in the preceding section H of this preamble, a rule under section 15(j) of the CPSA is not a "consumer product safety standard." Accordingly, the preemptive effect of section 26(a) of the CPSA does not apply to a rule under section 15(j) of the CPSA.

J. Paperwork Reduction Act

This proposed rule would not impose any information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

K. Environmental Considerations

The Commission's environmental review regulation at 16 CFR part 1021 has established categories of actions that normally have little or no potential for affecting the human environment and therefore do not require either an environmental assessment or an environmental impact statement. The proposed rule is within the scope of the Commission's regulation, at 16 CFR 1021.5(c)(1), that provides a categorical exclusion for rules to provide design or performance requirements for products. Thus, no environmental assessment or environmental impact statement for this rule is required.

L. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires agencies to consider the impact of proposed rules on small entities, including small businesses. For the reasons given immediately below, the Commission concludes that the proposed rule will not have a significant impact on a substantial number of small entities.

Aggregate information about the market for children's outerwear is not readily available; these types of garments are not reported separately by the U.S. Department of Commerce. Nearly all manufacturers of these garments would be considered small businesses under the Small Business Administration (SBA) guidelines applicable to such enterprises (fewer than 500 employees). According to SBA data for 2006, of 9,343 U.S. firms that manufactured "cut and sew" apparel, 9,286, or 99.4 percent, had fewer than 500 employees, and more than 80 percent had fewer than 20 employees. Firms that manufacture children's outerwear would be a subset of the cut and sew manufacturing category, but these statistics would support the assumption that nearly all are small businesses. SBA firm-size data for clothing retailers also show that nearly all of these firms would be considered to be small businesses.

The Commission's staff estimates that a very high percentage of small businesses that manufacture or sell children's upper outerwear already sell only garments that comply with ASTM F 1816–97. Therefore, these firms would not be adversely affected if children's upper outerwear garments with drawstrings are added to the list of products that present a substantial product hazard. Also, the Commission's Office of Compliance and Field Operations already considers children's upper outerwear with hood or neck area drawstrings that are subject to, but do not comply with, ASTM F 1816–97 to be a substantial product hazard and would seek recalls of such products regardless of whether they were added, by rule, to the list of substantial product hazards under Section 15(j) of the CPSA. Finally, conformance to ASTM F 1816–97 is achieved for many garments distributed in commerce by simply eliminating drawstrings from the manufacturing process with minimal or no increase in resulting production costs.

M. Effective Date

The Commission proposes that any final rule based on this proposal become effective 30 days after its date of publication in the **Federal Register**. After that date, all items of children's upper outerwear that are subject to, but do not comply with, the ASTM F 1816–97 will be deemed to be substantial product hazards regardless of the date they were manufactured or imported.

N. Request for Comments

The Commission invites interested persons to submit their comments to the Commission on any aspect of the proposed rule. Comments should be submitted as provided in the instructions in the **ADDRESSES** section at the beginning of this notice.

O. References

1. Press Release: "CPSC Works With Industry To Remove Drawstring Hazard," *News from CPSC,* July 12, 1994.

2. Letter from John Gibson Mullan, Director, CPSC's Office of Compliance, to Manufacturers, Importers and Retailers of Children's Upper Outerwear, May 19, 1996.

3. Population estimates based on data from the Bureau of the Census, U.S. Department of Commerce, *http://www.census.gov/popest/national/asrh/NC-EST2008/NC-EST2008-01.xls* and from the National Center for Health Statistics, Centers for Disease Control and Prevention, *http://www.cdc.gov/nchs/data/nvsr/nvsr58/nvsr58_09.pdf.*

4. CPSC staff memorandum, "Extent of Compliance with ASTM F 1816–97: Standard Safety Specification for Drawstrings on Children's Upper Outerwear," from Elizabeth W. Leland, Economist, Directorate for Economic Analysis, to Jonathan D. Midgett, Ph.D., Engineering Psychologist, Division of Human Factors, April 14, 2010.

5. CPSC staff memorandum, "Inclusion of Drawstrings on Children's Outerwear on the List of Substantial Product Hazards: Small Business Considerations," from Charles L. Smith, Economist, Directorate for Economic Analysis, to Jonathan D. Midgett, Ph.D., Engineering Psychologist, Division of Human Factors, Leader, Children's Program Area Team, January 26, 2010.

6. CPSC staff memorandum, "Reported Frequencies of Fatal and Nonfatal Incidents Related to Drawstrings on Children's Upper Outerwear Between 1985 and 2009," from John Topping, Mathematical Statistician, Division of Hazard Analysis, to Jonathan Midgett, Children's Hazard Team Coordinator, January 25, 2010.

7. CPSC staff memorandum, "Recommendation to Deem Children's Upper Outerwear with Drawstrings a Substantial Product Hazard," from Jonathan D. Midgett, Ph.D., Children's Hazards Team Coordinator and Robert J. Howell, Assistant Executive Director, Office of Hazard Identification and Reduction, to the Commission, April 20, 2010.

8. CPSC *Guidelines for Drawstrings on Children's Upper Outerwear,* September 1999.

List of Subjects in 16 CFR Part 1120

Administrative practice and procedure, Clothing, Consumer protection, Infants and children, Imports, Incorporation by reference.

For the reasons stated above, and under the authority of 15 U.S.C. 2064(j), 5 U.S.C. 553, and section 3 of Public Law 110–314, 122 Stat. 3016 (August 14, 2008), the Consumer Product Safety Commission proposes to amend 16 CFR part 1120, as proposed to be added elsewhere in this issue of the **Federal Register**, as follows:

PART 1120—SUBSTANTIAL PRODUCT HAZARD LIST

1. The authority citation for part 1120 is revised to read as follows:

Authority: 15 U.S.C. 2064(j); Sec. 3, Pub. L. 110–314, 122 Stat. 3016.

2. In § 1120.2, add paragraph (c) to read as follows:

§ 1120.2 Definitions.

* * * * *

(c) *Drawstring* means a non-retractable cord, ribbon, or tape of any material to pull together parts of outerwear to provide for closure.

3. In § 1120.3, add paragraph (b) to read as follows:

§ 1120.3 Substantial product hazard list.

* * * * *

(b) (1) Children's upper outerwear in sizes 2T to 16 or the equivalent, and having one or more drawstrings, that is subject to, but not in conformance with, the requirements of ASTM F 1816–97, *Standard Safety Specification for Drawstrings on Children's Upper Outerwear.* The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, PO Box C700, West Conshohocken, PA 19428–2959 USA, *telephone:* 610–832–9585; *http://www2.astm.org/*. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) At its option, the Commission may use one or more of the following methods to determine what sizes of children's upper outerwear are equivalent to sizes 2T to 16:

(i) Garments in girls' size Large (L) and boys' size Large (L) are equivalent to girls' or boys' size 12, respectively. Garments in girls' and boys' sizes smaller than Large (L), including Extra-Small (XS), Small (S), and Medium (M), are equivalent to sizes smaller than size 12. The fact that an item of children's upper outerwear with a hood and neck drawstring is labeled as being larger than Large (L) does not necessarily mean that the item is not equivalent to a size in the range of 2T to 12.

(ii) Garments in girls' size Extra-Large (XL) and boys' size Extra-Large (XL) are equivalent to size 16. The fact that an item of children's upper outerwear with a waist or bottom drawstring is labeled as being larger than Extra-Large (XL) does not necessarily mean that the item is not equivalent to a size in the range of 2T to 16.

(iii) In cases where garment labels give a range of sizes, if the range includes any size that is subject to a requirement in ASTM F 1816–97, the garment will be considered subject, even if other sizes in the stated range, taken alone, would not be subject to the requirement. For example, a coat sized 12 through 14 remains subject to the prohibition of hood and neck area drawstrings, even though this requirement of the ASTM standard only applies to garments up to size 12. A size 13 through 15 coat would not be considered within the scope of the ASTM standard's prohibition of neck and hood drawstrings, but would be subject to the requirements for waist or bottom drawstrings.

(iv) To fall within the scope of paragraphs (b)(2)(i) through (2)(iii) of this section, a garment need not state anywhere on it, or on its tags, labels, package, or any other materials accompanying it, the term "girls," the term "boys," or whether the garment is designed or intended for girls or boys.

(v) The Commission may determine equivalency to be as stated in a manufacturer's (including importer's), distributor's, or retailer's statements of what sizes are equivalent to sizes 2T to 16. A firm's statement of what sizes are equivalent to sizes 2T to 16 may not be used to show that the size of a garment is not equivalent to a size in the range of 2T to 16.

(vi) The Commission may use any other evidence that would tend to show that an item of children's upper outerwear is a size that is equivalent to sizes 2T to 16.

Dated: May 11, 2010.

Todd Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2010–11622 Filed 5–14–10; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1120

[CPSC Docket No. CPSC–2010–0042]

Substantial Product Hazard List: Hand-Held Hair Dryers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Consumer Product Safety Improvement Act of 2008 ("CPSIA"), authorizes the United States Consumer Product Safety Commission ("Commission") to specify, by rule, for any consumer product or class of consumer products, characteristics whose existence or absence shall be deemed a substantial product hazard under certain circumstances. In this document, the Commission is proposing a rule to determine that any hand-held hair dryer without integral immersion protection presents a substantial product hazard.

DATE: Written comments in response to this notice must be received by August 2, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2010–0042, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted

without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov*. Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Randy Butturini, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7562, *rbutturini@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background and Statutory Authority

The Consumer Product Safety Improvement Act of 2008 ("CPSIA") was enacted on August 14, 2008. Public Law 110–314, 122 Stat. 3016 (August 14, 2008). The CPSIA amends statutes which the U.S. Consumer Product Safety Commission ("Commission" or "CPSC") administers, and adds certain new requirements.

Section 223 of the CPSIA expands section 15 of the Consumer Product Safety Act ("CPSA") to add a new subsection (j). That subsection delegates to the Commission authority to specify by rule for a consumer product or class of consumer products, characteristics whose presence or absence the Commission considers present a substantial product hazard. Those characteristics must be readily observable, have been addressed by an applicable voluntary standard that has been effective in reducing the risk of injury, and there must be substantial compliance with the voluntary standard. 15 U.S.C. 2064(j).

Underwriters Laboratories ("UL") *Standard for Safety for Household Electric Personal Grooming Appliances, UL 859,* is a voluntary standard that specifies immersion protection requirements for certain household appliances, including hand-held hair dryers. The current immersion protection provisions have been in effect since 1991. *UL Standard for Safety for Commercial Electric Personal Grooming Appliances,* UL 1727, specifies immersion protection requirements for grooming appliances, including hand-held hair dryers, which are "intended for use by qualified personnel in commercial establishments such as beauty parlors, barber shops, or cosmetic studios." UL 1727 requires the same integral immersion protection as UL 859. Such "commercial" hand-held hair dryers may be consumer products if they are available for sale to, or use of, consumers.

The Commission is proposing a rule to deem any hand-held hair dryer without integral immersion protection, as specified in UL 859 or UL 1727, a substantial product hazard. Hand-held hair dryers, most often used in bathrooms and near water, are subject to accidental immersion during their use. Section 15(a) of the CPSA defines "substantial product hazard" to include, a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public. 15 U.S.C. 1064(a)

On November 25, 2002, CPSC's Director of the Office of Compliance sent a letter to manufacturers and importers of hand-held hair dryers stating that CPSC staff considers hair dryers available for sale to, or use by, consumers to present a substantial product hazard if they do not have immersion protection as required by UL 859. The letter urged manufacturers and importers to assure that their hand-held hair dryers provide immersion protection. The letter noted that "[s]ome firms market hand held hair dryers that they contend are intended for professional use only, that is, for use by professionals in hair salons. However, the staff also considers 'professional' hair dryers that are available for sale to consumers and that fail to provide immersion protection to be defective and to present a substantial product hazard."

B. The Product

A hand-held hair dryer is a portable electrical appliance with a cord-and-plug connection. Typically, they have a big barrel-like body with a pistol grip handle. Frequently, such hair dryers have two control switches or knobs: one turns the unit on and off and may allow the user to adjust the blower speed; the second adjusts the heat setting, often "cool/low/high." Hand-held hair dryers routinely contain open-coil heating elements that are, in essence, uninsulated, electrically energized wires across which a fan blows air. These dryers are typically used in bathrooms near water sources, such as sinks, bathtubs, and lavatories. Being uninsulated, if the heating element were to contact water, an alternative current flow path could easily be created, posing the risk of shock or electrocution to the user holding the dryer (or retrieving it after dropping it into a sink, bathtub, or lavatory).

The proposed rule would define "hand-held hair dryer" as "an electrical appliance, intended to be held with one hand during use, which creates a flow of air over or through a self-contained heating element for the purpose of drying hair."

The characteristics of a hand-held hair dryer with integral immersion protection are readily observable. The power cord of a hand-held hair dryer with integral immersion protection has a large block-shaped plug that incorporates a type of circuit interrupter which is either a Ground Fault Circuit Interrupter ("GFCI"), an Appliance Leakage Circuit Interrupter ("ALCI"), or an Immersion Detection Circuit Interrupter ("IDCI"). The plug usually also has buttons labeled "Test" and "Reset." If the hair dryer should become wetted or immersed in water enough to cause electrical current to flow beyond normal circuitry, the circuit interrupter will sense the flow and, in a fraction of a second, disconnect the hair dryer from its power source, preventing serious injury or death to a consumer.

An estimated 23 million units of hand-held hair dryers are sold annually. The staff does not know exactly how many companies supply hand-held hair dryers. Sixteen suppliers of hand-held hair dryers are listed in the UL Online Certifications Directory as being in compliance with UL 859. An additional 42 companies are listed in the Intertek ETL Listed Mark Product Directory as complying with the UL 859 standard. Ten firms are listed to the UL 1727 standard on UL's Online Certifications directory and another four firms are listed in the Intertek ETL Listed Mark Product Directory as being in compliance with UL 1727. In 2007, the three largest suppliers listed accounted for approximately 92% of domestic hand-held hair dryer sales.

C. The Risk of Injury

The Commission has reports of 104 deaths and 43 electric shock injuries due to hair dryer immersion/water contact from 1984 to 2004. Of the 104 electrocutions resulting in death, the most incidents (91) occurred during 1984–90 (before the current immersion protection provisions of UL 859 took effect) compared to 12 during 1991–97, and one during 1998–04.

During 1980–86, before the introduction of the initial UL requirements for hair dryers, a total of 110 electrocutions (15.7 annual average) were reported due to hair dryer immersion/water contact. In 1987, UL implemented a change to voluntary

standard UL 859 to require immersion protection for hand-held hair dryers if the dryer switch was in the "off" position. During 1987–90, a total of 39 such electrocutions (9.75 annual average) were reported. In 1991, a revision to the UL standard requiring immersion protection in the "off" as well as "on" position took effect. During 1991–97, after the enhanced standard took effect, a total of 12 electrocutions (1.71 annual average) were reported and three electrocutions (0.3 annual average) were reported during 1998–2007, a period when most hair dryers made before 1991 were likely to be out of use. Reporting is ongoing for the years 2006 and 2007.

D. Voluntary Standards

Hand-held hair dryers are included in UL 859, *Standard for Safety for Household Electric Personal Grooming Appliances.* In 1985, UL revised this standard to require protection against electrocution when a hair dryer is plugged into an electrical outlet, with its switch in the "off" position, and is immersed in water. The requirement took effect in October 1987. Between 1987 and 1990, the average number of reported deaths from hair dryer immersion/water contact dropped to approximately 10 deaths per year.

In 1990, the National Electrical Code (NEC) (Article 422–24, 1990 edition) instituted requirements for protection against electrocutions from immersion of hair dryers when the switch is in either the "on" or the "off" position.

In 1987, UL, in keeping with NEC, revised its immersion protection standard to require that "A hand-supported hair-drying appliance (such as a hair dryer, blower-styler, heated air comb, heated air hair curler, curling iron-hair dryer combination, a wall-hung hair dryer or hand unit of a wall-mounted hair dryer, or similar appliance) shall be constructed to reduce the risk of electric shock when the appliance is energized, with its power switch in either the "on" or "off" position, and immersed in water having an electrically conductive path to ground." This revision, which took effect January 1, 1991, expanded immersion protection to cover the appliance whether the switch was in the "on" or "off" position.

As discussed in section C of this document, the reported incidents of death from immersion-related electrocutions involving hand-held hair dryers significantly declined with implementation of immersion protection requirements in UL 859. The average number of reported hand-held hair dryer electrocutions resulting in death is now less than one per year.

UL 1727, *Standard for Safety for Commercial Electric Personal Grooming Appliances,* originally issued in 1986, was revised to include the same integral immersion protection as UL 859 after the full immersion protection requirements in UL 859 proved to be effective. These requirements in UL 1727 became effective March 31, 1994.

E. Recalls

As noted in section A of this document, in November 2002, the director of the Office of Compliance sent a letter to importers and manufacturers of hand-held hair dryers indicating the staff's expectation that such hair dryers should have immersion protection and that the staff would consider them to present a substantial product hazard if they did not. There have been numerous recalls of hand-held hair dryers due to lack of immersion protection. Since January 1, 1991, there have been 30 recalls of hand-held hair dryers due to lack of an immersion protection device. Of these, three occurred during the year 2009.

F. Substantial Compliance

There is no statutory definition of "substantial compliance" in either the CPSIA or the CPSA. Legislative history of the CPSA provision that is related to issuance of consumer product safety standards indicates that substantial compliance should be measured by reference to the number of complying products, rather than the number of manufacturers of products complying with the standard. H.R. Rep. No. 208, 97th Cong., 1st Sess. 871 (1981). Legislative history of this CPSA rulemaking provision also indicates that there is substantial compliance when the unreasonable risk of injury associated with a product will be eliminated or adequately reduced "in a timely fashion." *Id.* The Commission has not taken the position that there is any particular percentage that differentiates substantial compliance from something that is not substantial compliance. Rather than any bright line, the Commission has been of the view in the rulemaking context that the determination needs to be made on a case-by-case basis.

The staff estimates sales of hand-held hair dryers are about 23 million units annually. There are 16 suppliers of hand-held hair dryers listed in the UL Online Certifications Directory, and an additional 42 suppliers listed in the Intertek ETL Listed Mark Product Directory as supplying hand-held hair dryers compliant with UL 859. Ten firms are listed to the UL 1727 standard on UL's Online Certifications Directory and another four firms are listed in the Intertek ETL Listed Mark Product Directory as being in compliance with UL 1727.

In 2007, the three largest suppliers listed accounted for approximately 92% of domestic hand-held hair dryer sales. As discussed above, additional suppliers are also listed as supplying hand-held hair dryers that are in compliance with the UL standards. Since the three largest suppliers (which are listed as producing hair dryers that comply with the UL standards) account for 92% of the domestic sales of hand-held hair dryers and additional companies are also listed as producing complying hand-held hair dryers, the staff estimates that over 95% of hand-held hair dryers for sale in this country comply with the UL standards. The Commission, therefore, determines that there is substantial compliance with UL 859 and UL 1727.

G. Effect of Section 15(j) Rule

Section 15(j) of the CPSA allows the Commission to issue a rule specifying that a consumer product (or class of consumer products) has characteristics whose presence or absence creates a substantial product hazard. Placing a consumer product on this substantial product hazard list has certain ramifications. A product that is or has a substantial product hazard is subject to the reporting requirements of section 15(b) of the CPSA. 15 U.S.C. 2064(b). A manufacturer who fails to report a substantial product hazard to the Commission is subject to civil penalties under section 20 of the CPSA and possibly to criminal penalties under section 21 of the CPSA. *Id.* 2069 & 2070.

A product that is or contains a substantial product hazard is subject to corrective action under section 15(c) and (d) of the CPSA. *Id.* 2064(c) & (d). Thus, the Commission can order the manufacturer, distributor or retailer of the product to offer to repair or replace the product, or to refund the purchase price to the consumer.

Finally, a product that is offered for import into the United States and is or contains a substantial product hazard shall be refused admission into the United States under section 17(a) of the CPSA. *Id.* 2066(a).

H. Regulatory Flexibility Certification

The Regulatory Flexibility Act ("RFA") generally requires that agencies review proposed rules for their potential economic impact on small entities, including small businesses. 5 U.S.C. 601–612. As noted in section B of this

document above, CPSC has identified 58 suppliers of hand-held hair dryers to the U.S. consumer market which provide products listed to the UL standard. Three large firms supply approximately 92% of the U.S. market share. According to the Small Business Administration Size Standards, these three firms are not small businesses. According to the UL Online Certifications Directory and the Intertek ETL Listed Mark Products Directory, these three firms plus an additional 55 firms are UL listed to produce complying hair dryers. All but one of these 55 firms appears to be a small business. Thus, the overwhelming majority of hair dryers sold in the United States are already UL listed. Since the majority of businesses (both large and small) are already in compliance with the voluntary standard, the proposed rule is not expected to pose a significant burden to small business. Therefore, the Commission certifies that, in accordance with section 605 of the RFA, the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

I. Environmental Considerations

A rule determining that hand-held hair dryers without immersion protection in accordance with UL 859 or UL 1727 present a substantial product hazard is not expected to have an adverse impact on the environment and is considered to be a "categorical exclusion" for the purposes of the National Environmental Policy Act according to the CPSC regulations that cover its "environmental review" procedures (16 CFR 1021.5(c)(1)).

J. Paperwork Reduction Act

This proposed rule would not impose any information collection requirements. Accordingly, this rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

K. Effective Date

The proposed effective date of Part 1120, which declares that any held-held hair dryer without immersion protection, as specified in UL 859 or UL 1727, is a substantial product hazard, is 30 days from issuance of any final regulation in the **Federal Register.** Thus, it would apply to hand-held hair dryers imported or introduced into commerce 30 days or more after publication of any final rule in the **Federal Register**.

L. Preemption

The proposed rule would place hand-held hair dryers without integral immersion protection on a list of products that present a substantial product hazard. The proposed rule does not establish a consumer product safety standard. The preemption provisions in section 26(a) of the CPSA, 15 U.S.C. 2075(a), apply when a consumer product safety standard is in effect. Therefore, section 26(a) of the CPSA would not apply to this rule.

M. Request for Comments

The Commission invites interested persons to submit their comments to the Commission on any aspect of the proposed rule. Comments should be submitted as provided in the instructions in the **ADDRESSES** section at the beginning of this notice.

List of Subjects in 16 CFR Part 1120

Administrative practice and procedure, Consumer protection, Household appliances, Imports, Incorporation by reference.

Therefore, the Commission proposes to amend Title 16 of the Code of Federal Regulations by adding part 1120 to read as follows:

PART 1120—SUBSTANTIAL PRODUCT HAZARD LIST

Sec.

1120.1 Authority
1120.2 Definitions
1120.3 Substantial product hazard list

Authority: 15 U.S.C. 2064(j).

§ 1120.1 Authority.

Under the authority of section 15(j) of the Consumer Product Safety Act (CPSA), the Commission determines that consumer products or classes of consumer products listed in § 1120.3 have characteristics whose existence or absence presents a substantial product hazard under section 15(a)(2) of the CPSA. The Commission has determined that the listed products have characteristics that are readily observable and have been addressed by a voluntary standard, that the voluntary standard has been effective, and that there is substantial compliance with the voluntary standard. The listed products are subject to the reporting requirements of section 15(b) of the CPSA and to the recall provisions of section 15(c) and (d) of the CPSA, and shall be refused entry into the United States under section 17(a)(4) of the CPSA.

§ 1120.2 Definitions.

The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this part 1120.

(a) *Substantial product hazard* means a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(b) *Hand-held hair dryer* means an electrical appliance, intended to be held with one hand during use, which creates a flow of air over or through a self-contained heating element for the purpose of drying hair.

§ 1120.3 Substantial product hazard list.

The following products or class of products shall be deemed to be substantial product hazards under section 15(a)(2) of the CPSA.

(a) Hand-held hair dryers that do not provide integral immersion protection in compliance with the requirements of section 5 of Underwriters Laboratories (UL) *Standard for Safety for Household Electric Personal Grooming Appliances,* UL 859–2007, 10th Edition, approved March 21, 2007, or section 6 of *UL Standard for Safety for Commercial Electric Personal Grooming Appliances, UL 1727, 4th Edition, approved March 25, 1999.* The Director of the Federal Register approves these incorporations by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy from UL, Inc., 333 Pfingsten Road, Northbrook, IL 60062. You may inspect a copy at the Office of the Secretary, U.S. Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814, telephone 301–504–7923, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) [Reserved]

Dated: May 11, 2010.

Todd Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 2010–11624 Filed 5–14–10; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0349]

RIN 1625–AA08

Safety Zone; Delaware River, Big Timber Creek, Westville, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary Safety Zone during the "Westville Parade of Lights," an annual event held annually on the last Saturday in June with a rain date of the first Saturday in July. This Safety Zone is necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in the regulated area within Big Timber Creek.

DATES: Comments and related material must be received by the Coast Guard on or before June 16, 2010.

ADDRESSES: You may submit comments identified by docket number USCG–XXXX–XXXX 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 Ensign Gary George, Coast Guard; telephone 215–271–4851, e-mail *gary.e.george@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–XXXX–XXXX), 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–XXXX–XXXX" 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–XXXX–XXXX" 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 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

Annually on the last Saturday of June, the Borough of Westville and Westville Power Boat will sponsor the "Parade of Lights." There will be a boat parade from the Route 130 Bridge to the Delaware River entrance in Big Timber Creek along with a fireworks display launched from land with a fallout area extending over the navigable waters of Big Timber Creek in the vicinity of Westville, New Jersey. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Proposed Rule

The Coast Guard proposes to establish a safety zone on Big Timber Creek in Westville, NJ, encompassing all waters from the Route 130 Bridge to the entrance of the Delaware River, shoreline to shoreline. The safety zone will be in effect from 8 p.m. to 11 p.m. on the last Saturday in June. The effect will be to restrict general navigation in the regulated area during the boat parade and fireworks display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the enforcement period. The Patrol Commander will notify the public of specific enforcement times by Marine Radio Safety Broadcast. These regulations are needed to control vessel traffic during the event to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under

section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Although this regulation restricts vessel traffic from transiting a portion of Big Timber Creek near Westville, New Jersey, 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 and area newspapers so mariners can adjust their plans accordingly.

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: the owners or operators of vessels intending to transit a portion of Big Timber Creek in the vicinity of Westville, New Jersey during the event.

This proposed rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The rule will be in effect for only a short period, from 8 p.m. to 11 p.m. on the last Saturday in June, annually. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

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.

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.

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.

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 the address listed under **ADDRESSES**. 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 (adjusted for inflation) 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 cause 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 that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the creation of a safety zone and is categorically excluded from further analysis under exemption 34(g) of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T05–0349 to read as follows:

§ 165.T05–0349, Safety Zone; Big Timber Creek, Westville, New Jersey.

(a) Regulated area: The waters of the Big Timber Creek in Westville Boro, Gloucester County, New Jersey, from the Route 130 Bridge to the entrance of the Delaware River.

(b) Definitions:

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(c) Safety Zone: (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(d) Enforcement Period. This section will be enforced annually from 8 p.m. to 11 p.m. on the last Saturday in June with a rain date of the first Saturday in July.

Dated: April 29, 2010.

M.L. Austin,

Captain, U.S. Coast Guard, Captain of the Port, Sector Delaware Bay.

[FR Doc. 2010–11655 Filed 5–14–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0157; FRL–9151–9]

Approval and Promulgation of Air Quality Implementation Plans; State of West Virginia; Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve submittals from the State of West Virginia pursuant to the Clean Air Act (CAA) sections 110(k)(2) and (3). These submittals address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) and the 2006 $PM_{2.5}$ NAAQS. This proposed action is limited to the following infrastructure elements which were subject to EPA's completeness findings pursuant to CAA section 110(k)(1) for the 1997 8-hour ozone NAAQS dated March 27, 2008 and the 1997 $PM_{2.5}$ NAAQS dated October 22, 2008: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof.

DATES: Written comments must be received on or before June 16, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0157 by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: fernandez.cristina@epa.gov.*
- *Mail:* EPA–R03–OAR–2010–0157, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2010–0157. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://*

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by e-mail at *shandruk.irene@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS (62 FR 38856) and a new $PM_{2.5}$ NAAQS (62 FR 38652). The revised ozone NAAQS is based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. The new $PM_{2.5}$ NAAQS established a health-based $PM_{2.5}$ standard of 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a twenty-four hour standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA strengthened the 24-hour $PM_{2.5}$ NAAQS from 65 $\mu g/m^3$ to 35 $\mu g/m^3$ on October 17, 2006 (71 FR 61144).

Section 110(a) of the CAA requires States to submit State Implementation Plans (SIPs) that provide for the implementation, maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS. In March of 2004, Earthjustice initiated a lawsuit against EPA for failure to take action against States that had not made SIP submissions to meet the requirements of sections 110(a)(1) and (2) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, i.e., failure to make a "finding of failure to submit the required SIP 110(a) SIP elements." On March 10, 2005, EPA entered into a Consent Decree with Earthjustice that obligated EPA to make official findings in accordance with section 110(k)(1) of the CAA as to whether States have made required complete SIP submissions, pursuant to sections 110(a)(1) and (2), by December 15, 2007 for the 1997 8-hour ozone NAAQS and by October 5, 2008 for the 1997 $PM_{2.5}$ NAAQS. EPA made such findings for the 1997 8-hour ozone NAAQS on March 27, 2008 (73 FR 16205) and on October 22, 2008 (73 FR 62902) for the 1997 $PM_{2.5}$ NAAQS. These completeness findings did not include findings relating to: (1) Section 110(a)(2)(C) to the extent that such subsection refers to a permit program as required by Part D Title I of the CAA; (2) section 110(a)(2)(I); and (3) section 110(a)(2)(D)(i), which has been addressed by a separate finding issued by EPA on April 25, 2005 (70 FR 21147). Therefore, this action does not cover these specific elements.

II. Summary of State Submittal

West Virginia provided multiple submittals to satisfy section 110(a)(2) requirements that are the subject of this proposed action for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. The submittals shown in Table 1 addressed the infrastructure elements, or portions thereof, identified in section 110(a)(2) that EPA is proposing to approve.

TABLE 1—110(a)(2) ELEMENTS, OR PORTIONS THEREOF, EPA IS PROPOSING TO APPROVE FOR 1997 OZONE AND $PM_{2.5}$ AND 2006 $PM_{2.5}$ NAAQS

Submittal date	1997 8-hour ozone	1997 $PM_{2.5}$	2006 $PM_{2.5}$
December 3, 2007	A, C, D(ii), E, F, G, J, K, L.		
April 3, 2008		A, C, D(ii), E, F, J, L.	
May 21, 2008	B, E, F, G, H, J, K, M	B, E, F, G, H, J, K, M.	
July 9, 2008		G.	
October 1, 2009	C	C	A, B, C, D(ii), E, F, G, H, J, K, L, M.
March 18, 2010		G	G.

EPA has analyzed the above identified submissions and is proposing to make a determination that such submittals meet the requirements of section 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof. A detailed summary of EPA's review of and rationale for approving West Virginia's submittals may be found in the Technical Support Document (TSD) for this action, which is available online at *http://www.regulations.gov,* Docket number EPA–R03–OAR–2010–0157.

III. Proposed Action

EPA is proposing to approve West Virginia's submittals that provide the basic program elements specified in the CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M), or portions thereof, necessary to

implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to West Virginia's section 110(a)(2) infrastructure requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 5, 2010.

W.C. Early,

Acting Regional Administrator, Region II.

[FR Doc. 2010–11677 Filed 5–14–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0139; FRL–9151–8]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone and the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve submittals from the District of Columbia (the District) pursuant to the Clean Air Act (CAA) sections 110(k)(2) and (3). These submittals address the infrastructure elements specified in the CAA section 110(a)(2), necessary to implement, maintain, and enforce the 1997 8-hour ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS) and the 2006 $PM_{2.5}$ NAAQS. This proposed action is limited to the following infrastructure elements which were subject to EPA's completeness findings pursuant to CAA section 110(k)(1) for the 1997 8-hour ozone NAAQS dated March 27, 2008, and the 1997 $PM_{2.5}$ NAAQS dated October 22, 2008: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

DATES: Written comments must be received on or before June 16, 2010.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–0139 by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: fernandez.cristina@epa.gov.*
- *Mail:* EPA–R03–OAR–2010–0139, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- *Hand Delivery:* At the previously-listed EPA Region III address. 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–R03–OAR–2010–0139. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute.

Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the District of Columbia Department of the Environment, Air Quality Division, 51 N Street, NE., Washington, District of Columbia 20002.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at *quinto.rose@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On July 18, 1997, EPA promulgated a revised 8-hour ozone NAAQS (62 FR 38856) and a new $PM_{2.5}$ NAAQS (62 FR 38652). The revised ozone NAAQS is based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm. The new $PM_{2.5}$ NAAQS established a health-based standard of 15.0 micrograms per cubic meter ($\mu g/m^3$) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and a 24-hour standard of 65 $\mu g/m^3$ based on a 3-year average of the 98th percentile of 24-hour concentrations. EPA strengthened the 24-hour $PM_{2.5}$ NAAQS from 65 $\mu g/m^3$ to 35 $\mu g/m^3$ on October 17, 2006 (71 FR 61144).

Section 110(a) of the CAA requires States to submit State Implementation Plans (SIPs) that provide for the implementation, maintenance, and enforcement of new or revised NAAQS within three years following the promulgation of such NAAQS. In March of 2004, Earthjustice initiated a lawsuit against EPA for failure to take action against States that had not made SIP submissions to meet the requirements of sections 110(a)(1) and (2) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS, i.e., failure to make a "finding of failure to submit the required SIP 110(a) SIP elements." On March 10, 2005, EPA entered into a Consent Decree with Earthjustice that obligated EPA to make official findings, in accordance with section 110(k)(1) of the CAA as to whether States have made complete SIP submissions, pursuant to sections 110(a)(1) and (2), by December 15, 2007 for the 1997
8-hour ozone NAAQS, and by October 5, 2008 for the 1997 $PM_{2.5}$ NAAQS. EPA made completeness findings for the 1997 8-hour ozone NAAQS on March 27, 2008 (73 FR 16205) and on October 22, 2008 (73 FR 62902) for the 1997 $PM_{2.5}$ NAAQS. These completeness findings did not include findings relating to: (1) Section 110(a)(2)(C) to the extent that such subsection refers to a permit program as required by Part D Title I of the CAA; (2) section 110(a)(2)(I); and (3) section 110(a)(2)(D)(i), which has been addressed by a separate finding issued by EPA on April 25, 2005 (70 FR 21147). Therefore, this action does not cover these specific elements.

II. Summary of State Submittal

The District provided multiple submittals to satisfy section 110(a)(2) requirements, that are the subject of this proposed rule for the 1997 8-hour ozone NAAQS and the 1997 and 2006 $PM_{2.5}$ NAAQS. The submittals dated December 6, 2007 and January 11, 2008 addressed the 110(a)(2) requirements for the 1997 8-hour ozone NAAQS; the submittals dated August 25, 2008 and September 22, 2008 addressed the 110(a)(2) requirements for the 1997 $PM_{2.5}$ NAAQS; and the submittal dated September 21, 2009 addressed the section 110(a)(2) requirements for the 2006 $PM_{2.5}$ NAAQS. These submittals addressed the following infrastructure elements, that are the subject of this proposed rule: 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M).

EPA has analyzed the above identified submissions and is proposing to make a determination that such submittals meet the requirements of 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). A detailed summary of EPA's review of and rationale for approving the District's submittals may be found in the Technical Support Document (TSD) for this action which is available on line at *http://www.regulations.gov,* Docket number EPA–R03–OAR–2010–0139.

III. Proposed Action

EPA is proposing to approve the District of Columbia's submittals that provide the basic program elements specified in the CAA sections 110(a)(2)(A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) necessary to implement, maintain, and enforce the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, pertaining to the District of Columbia's section 110(a)(2) infrastructure requirements for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS, does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved

to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 5, 2010.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2010–11679 Filed 5–14–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R06–OAR–2008–0932; FRL–9151–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Texas; Beaumont/Port Arthur Ozone Nonattainment Area: Redesignation to Attainment for the 1997 8-Hour Ozone Standard and Determination of Attainment for the 1-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a request from the State of Texas to redesignate the Beaumont-Port Arthur (BPA) Texas ozone nonattainment area to attainment of the 1997 8-hour ozone standard. In proposing to approve this request, EPA also proposes to approve as a revision to the BPA State Implementation Plan (SIP), a 1997 8-hour ozone maintenance plan with a 2021 Motor Vehicle Emissions Budget (MVEB). EPA is proposing to determine that the BPA nonattainment area has attained the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS), based on complete, quality-assured, and certified ambient air quality monitoring data for the 2005–2007 and 2006–2008 monitoring periods, as well as data from 2009 that are in EPA's Air Quality System (AQS) database but not yet certified, that demonstrate that the area has attained and is continuing to attain the 1997 8-hour ozone NAAQS. EPA also is proposing to make a determination that the BPA area is meeting the 1-hour ozone standard based upon three years of complete, quality-assured, and certified ambient air quality monitoring data for the 2005–2007 and 2006–2008 monitoring periods, as well as data from 2009 in AQS but not yet certified.

EPA is proposing to approve the BPA area's 2002 base year emissions inventory as part of the BPA SIP and to conclude that if this action is finalized, the area is meeting all of its applicable marginal area requirements for purposes of redesignation for the 1997 8-hour ozone NAAQS. EPA also is proposing to approve as part of the BPA SIP, the Texas Clean-Fuel Vehicle (CFV) Program Equivalency Demonstration. EPA is proposing to find that if these proposed approvals are finalized, the area will have a fully approved SIP that meets all of its applicable 1997 8-hour requirements and 1-hour anti-backsliding requirements under section 110 and Part D of the federal Clean Air Act (CAA or Act) for purposes of redesignation.

Additionally, EPA is proposing to approve the post-1996 Rate of Progress (ROP) plan's contingency measures, the substitute control measures for the failure-to-attain contingency measures, and the removal from the Texas SIP of the 1-hour ozone failure-to-attain contingency measure, a VOC SIP rule for marine vessel loading, as meeting the requirements of section 110(l) and part D of the Act.

DATES: Comments must be received on or before June 16, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R06–OAR–2008–0932, by one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *U.S. EPA Region 6 "Contact Us" Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD" (Multimedia) and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by email to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R06–OAR–2008–0932. 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 Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. 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.*

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 Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in

the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal, which is part of the EPA record, is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Belk, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone (214) 665–2164; fax number 214–665–7263; e-mail address *belk.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" means EPA.

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I. What are the actions EPA is proposing?

EPA is proposing several related actions pursuant to the Act for the BPA ozone nonattainment area, consisting of Hardin, Jefferson, and Orange counties. EPA is proposing to determine that the BPA area has attained the 1997 8-hour ozone NAAQS, based on the most recent three years of complete, quality-assured monitoring data. EPA is proposing to find that the BPA area has met the requirements for redesignation under section 107(d)(3)(E) of the Act, and is therefore proposing to approve a request from the State of Texas to redesignate the BPA area to attainment of the 1997 8-hour ozone standard. EPA is also proposing to approve, pursuant to section 175A of the Act, the area's 1997 8-hour ozone maintenance plan as a revision to the Texas SIP; to approve the plan's associated 2021 MVEB; and to approve the 2002 base year emissions inventory. With the approval of the 2002 base year emissions inventory, EPA is proposing to find that the BPA area has satisfied all marginal area requirements for the 1997 8-hour ozone NAAQS. *See* Section VI.B.2. and the Technical Support Document (TSD), Part I.A., for further information on how the BPA area satisfies all the other marginal area requirements. In addition, EPA is proposing to approve the Texas Clean-Fuel Vehicle (CFV) Program Equivalency Demonstration as meeting a serious area anti-backsliding requirement for the 1-hour ozone standard. With the approval of the Texas CFV equivalency determination, we are proposing to find that the BPA has satisfied all 1-hour anti-backsliding requirements for a serious area for the purposes of redesignation. For further information on how the area meets the serious area requirements apart from the CFV Program, please see Section VI.B.1. and the TSD, Part II.A. Further, EPA is proposing to make a determination that the BPA area is meeting the 1-hour ozone standard.

Finally, EPA is proposing to approve the 1-hour ozone post-1996 rate of progress (ROP) plan's contingency measures, substitute measures for the SIP-approved failure-to-attain contingency measures, and the removal from the Texas SIP of the contingency measure, a VOC SIP rule for marine vessel loading, as meeting the requirements of section 110(l) and part D. Each component of this action is discussed in greater detail below.

First, EPA is proposing to make a determination under the Act that the BPA area has attained the 1997 8-hour ozone NAAQS. The BPA area includes three counties in Texas: Hardin, Orange, and Jefferson. This proposed determination is based on complete, quality-assured and certified ambient air quality monitoring data for the 2005–2007 and 2006–2008 ozone seasons that demonstrate that the 1997 8-hour ozone NAAQS has been attained in the area. Data entered into EPA's Air Quality System database (AQS) for 2009, but not yet certified also show that the area continues to attain the standard.

As one of the requirements for approving a redesignation request, EPA is proposing to approve as a revision to the Texas SIP, the State's maintenance

plan for the BPA area as meeting the requirements of section 175A. EPA also is proposing to approve the 2002 base year emissions inventory for the BPA area as meeting a requirement of the Act for a marginal 1997 8-hour ozone area, section 182(a)(1). Additionally, we are proposing to approve the Texas CFV Program Equivalency Demonstration as meeting the serious area requirements of the Act for the 1-hour ozone standard. With the approval of the 2002 base year emissions inventory and the CFV Program Equivalency Demonstration, EPA is proposing to find that the area has met all the applicable 8-hour ozone and 1-hour anti-backsliding requirements of section 110 and part D of the Act for purposes of redesignation, and that the BPA area has a fully approved SIP under section 110(k) for purposes of redesignation.

Based upon the above, EPA is proposing to approve a request from the State of Texas submitted on December 16, 2008, through the Texas Commission on Environmental Quality (TCEQ), to redesignate the BPA area to attainment of the 1997 8-hour ozone standard. If EPA's determination that the area has attained the standard is made final and the BPA area is redesignated to attainment with an approved 8-hour ozone NAAQS maintenance plan, then under the provisions of EPA's ozone implementation rule, the obligations to submit and have an approved 1-hour ozone NAAQS attainment demonstration and reasonably available control measures determination (RACM) and contingency measures no longer apply. As discussed later, BPA was not required to have an 8-hour ozone attainment demonstration because Texas submitted a redesignation request before the area's moderate area SIP requirements, including an attainment demonstration, were due (for more information, please see section VI).

EPA is proposing to determine that the BPA area is meeting the 1-hour ozone standard. This determination is based on complete, quality-assured and certified ambient air quality monitoring data for the 2005–2007 and 2006–2008 monitoring periods which demonstrate that the 1-hour ozone NAAQS has been attained in the area; this determination is also consistent with data for 2009 that are in AQS but not yet certified. The obligations for the state to submit and for EPA to approve a 1-hour serious area attainment demonstration and RACM determination and contingency measures will be suspended if EPA's proposal to determine that the area has attained the 1-hour standard is finalized, and the area will be relieved of these obligations upon final redesignation for the 1997 8-hour ozone standard. *See* 40 CFR 51.905(a)(3)(ii).

Even though the obligations to submit and have approved the 1-hour contingency measures are suspended upon a determination that the area is attaining the 1-hour standard, and terminated upon the BPA area's redesignation to attainment for the 8-hour ozone NAAQS, EPA is proposing to approve the post-1996 ROP plan's contingency measures and the backfill failure-to-attain contingency measures. EPA is proposing this action on the contingency measures because the State is requesting that an existing SIP-approved 1-hour ozone failure-to-attain contingency measures be removed from the SIP, and has not indicated that it wishes to withdraw the contingency measures SIP revision submittals. EPA is proposing to approve the removal from the Texas SIP of the failure-to-attain contingency measure, a VOC SIP rule for marine vessel loading, as meeting the requirements of section 110(l) and part D.

II. What is the background for these actions?

A. What are the National Ambient Air Quality Standards?

Section 109 of the Act requires EPA to establish NAAQS (or standards) for pollutants that "may reasonably be anticipated to endanger public health and welfare," and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety, and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants, referred to as criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the minimum air quality levels they must meet to comply with the Act. Also, these standards provide information to residents of the United States about the air quality in their communities. A State's SIP addresses these requirements, as required by section 110 and other provisions of the Act. The SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that the state meets the NAAQS.

B. What is ozone and why do we regulate it?

Ozone, a gas composed of three oxygen atoms, at the ground level is generally not emitted directly by sources such as from a vehicle's exhaust or an industrial smokestack; rather, ground level ozone is produced by a chemical reaction between nitrogen oxides (NO_X) and VOCs in the presence of sunlight and high ambient temperatures. NO_X and VOCs are referred to as precursors of ozone. Motor vehicle exhaust and industrial emissions, gasoline vapors, and chemical solvents all contain NO_X and VOCs. Urban areas tend to have high concentrations of ground-level ozone, but areas without significant industrial activity and with relatively low vehicular traffic are also subject to increased ozone levels because wind carries ozone and its precursors many miles from the sources. The Act establishes a process for air quality management through the NAAQS.

Repeated exposure to ozone pollution may cause lung damage. Even at very low concentrations, ground-level ozone triggers a variety of health problems including aggravated asthma, reduced lung capacity, and increased susceptibility to respiratory illnesses like pneumonia and bronchitis. It can also have detrimental effects on plants and ecosystems.

C. What is the background for the BPA area under the 1-hour ozone NAAQS?

On December 11, 2002, the U.S. Court of Appeals for the Fifth Circuit vacated EPA's attainment date extension policy, which had been applied to extend the 1-hour ozone attainment deadline for the BPA area without reclassifying the area. *Sierra Club* v. *EPA,* 314 F.3d 735 (5th Cir. 2002). Thereupon, EPA on March 30, 2004, withdrew the action extending the attainment deadline for BPA, finalized its finding that the area failed to attain the 1-hour ozone standard by the moderate area deadline, and reclassified the BPA area by operation of law, to serious nonattainment for the 1-hour ozone standard. *See* 61 FR 16483. As a result of its reclassification to serious, the State was required, among other things, to submit by April 29, 2005, a new 1-hour attainment demonstration SIP with an attainment date of November 15, 2005 with new MVEBs and a new RACM analysis, a post-1996 rate of progress (ROP) plan with associated MVEBs and contingency measures, a new clean-fuel vehicle program or substitute, demonstrate the area met RACT, implement the EPA-triggered

failure-to-attain contingency measures, submit a replacement for, i.e., backfill for, the triggered failure-to-attain contingency measures, and to meet the remaining serious area requirements under section 182(c) of the Act. The State submitted the required elements on November 16, 2004, as revised on October 15, 2005, and further revised on December 16, 2008. EPA has approved all of the 1-hour serious area requirements for the BPA area, except for the CFV program, the ROP plan's contingency measures, the replacement failure-to-attain contingency measures, and the attainment demonstration SIP with associated MVEBs and RACM analysis. *See* Section VI.B.1. for further details.

D. What is the background for the BPA area under the 1997 8-Hour Ozone NAAQS?

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm), which is more protective than the previous 1-hour ozone standard (62 FR 38855).[1] The EPA published the 1997 8-hour ozone designations and classifications on April 30, 2004 (69 FR 23858). The BPA area was designated nonattainment and initially classified as marginal. The area includes three counties: Hardin, Jefferson, and Orange counties (these constitute the former 1-hour ozone nonattainment area). The effective date of designation for the 1997 8-hour ozone NAAQS was June 15, 2004. Under the marginal nonattainment designation, the latest attainment date for the BPA area was June 15, 2007. The BPA did not monitor attainment of the 1997 8-hour ozone NAAQS by the June 15, 2007 deadline, based upon complete, quality-assured and certified ambient air quality monitoring data for the 2004–2006 ozone seasons. The BPA area already met all of the requirements for a 1997 8-hour ozone marginal area except for the base year emissions inventory requirement. *See* Section VI.B.2. for further details.

Therefore, EPA determined that the BPA area had failed to attain the 1997 8-hour ozone standard by the applicable attainment deadline and the area was reclassified by operation of law as a moderate 1997 8-hour ozone nonattainment area, effective April 17, 2008 (73 FR 14391). This determination was based on ambient air quality data from the 2004–2006 monitoring period. More recent air quality data for the 2005–2007 and 2006–2008 monitoring periods, as well as 2009 data that are in AQS but not yet certified, however, indicate that the BPA area is now attaining the 1997 8-hour ozone standard. *See* Section V.A.

The deadline for submission of requirements to meet the area's new 8-hour moderate nonattainment area classification was January 1, 2009 (73 FR 14391). The TCEQ, on December 16, 2008, submitted a request that EPA determine that the BPA area has attained the 1997 8-hour ozone standard and redesignate it to attainment. The request included a maintenance plan with associated MVEBs, the 2002 base year emission inventory, the Texas CFV Program Equivalency Demonstration, and the backfill failure-to-attain contingency measures. The complete redesignation request was received by EPA before the deadline for submittal of the moderate area SIP requirements for the BPA area under the 1997 8-hour ozone standard.

III. What are the impacts of the court decisions on EPA's Phase 1 and 2 implementation rules upon the BPA area redesignation request?

A. Summary of the Court Decisions

This section sets forth EPA's views on the effect of the DC Circuit's rulings on this proposed redesignation action. For the reasons set forth below, EPA does not believe that the Court's rulings alter any requirements relevant to this redesignation action or prevent EPA from proposing or ultimately finalizing this redesignation. EPA believes that the Court's December 22, 2006, June 8, 2007, and July 10, 2009, decisions impose no impediment to moving forward with redesignation of this area to attainment of the 1997 8-hour ozone NAAQS.

EPA published a first phase rule governing implementation of the 1997 8-hour ozone standard (Phase 1 Rule) on April 30, 2004 (69 FR 23951). The Phase 1 Rule addresses classifications for the 1997 8-hour NAAQS and for revocation for the 1-hour NAAQS; how anti-backsliding principles will ensure continued progress toward attainment of the 1997 8-hour NAAQS; attainment dates; and the timing of emissions reductions needed for attainment. The Phase 1 Rule revoked the 1-hour ozone standard. The Phase 1 Rule also provided that 1-hour ozone nonattainment areas are required to adopt and implement "applicable requirements" according to the area's classification under the 1-hour ozone standard for anti-backsliding purposes. See 40 CFR 51.905(a)(i). On May 26, 2005, we determined that an area's 1-hour designation and classification as of June 15, 2004 would dictate what 1-hour obligations remain as "applicable requirements" under the Phase 1 Rule. 40 CFR 51.900(f). (70 FR 30592).

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Rule in *South Coast Air Quality Management Dist.* v. *EPA,* 472 F.3d 882 (DC Cir. 2006). On June 8, 2007, in response to several petitions for rehearing, the court clarified that the Phase 1 rule was vacated only with regard to those parts of the rule that had been successfully challenged. See 489 F.3d 1245 (DC Cir. 2007), *cert. denied,* 128 S.Ct. 1065 (2008). By limiting the vacatur, the Court let stand EPA's revocation of the 1-hour standard and those anti-backsliding provisions of the Phase 1 rule that had not been successfully challenged. The June 8, 2007 opinion reaffirmed the December 22, 2006 decision that EPA had improperly failed to retain four measures required for 1-hour nonattainment areas under the anti-backsliding provisions of the regulations: (1) Nonattainment area new source review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for 1-hour severe or extreme nonattainment areas that fail to attain the 1-hour standard by the 1-hour attainment date; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress toward attainment of the 1-hour NAAQS or for failure to attain that NAAQS; and (4) the court clarified that the Court's reference to conformity requirements was limited to requiring the continued use of 1-hour motor vehicle emissions budgets until 8-hour budgets were available for 8-hour conformity determinations.

EPA published a second rule governing implementation of the 1997 8-hour ozone standard (Phase 2 Rule) on November 29, 2005 (70 FR 71612), as revised on June 8, 2007 (72 FR 31727). The Phase 2 Rule addresses, among other things, the Clean Data Policy as codified in 40 CFR 51.918. The DC Circuit upheld the Clean Data Policy, agreeing with the Tenth Circuit that EPA's interpretation of the Act was reasonable. *NRDC* v. *EPA,* 571 F.3d

[1] On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 ppm. On January 6, 2010, EPA proposed to set the level of the primary 8-hour ozone standard within the range of 0.060 to 0.070 ppm, rather than at 0.075 ppm. EPA anticipates that by August 2010 it will have completed reconsideration of the standard and thereafter will proceed with designations. The actions addressed in today's proposed rulemaking relate only to redesignation for the 1997 8-hour ozone standard. EPA's actions with respect to this new standard do not affect EPA's action here.

1245 (DC Cir. 2009). *See Sierra Club* v. *EPA,* 99 F.3d 1551 (10th Cir. 1996).

B. Summary of EPA's Analysis of the Impact of the Court Decisions on the BPA Area

1. Requirements Under the Eight-Hour Ozone Standard

For the eight-hour ozone standard, the BPA ozone nonattainment area was originally classified as marginal nonattainment under subpart 2 of the CAA. The June 8, 2007, opinion clarifies that the Court did not vacate the Phase 1 Rule's provisions with respect to classifications for areas under subpart 2. The Court's decision, therefore, upholds EPA's classifications for those areas classified under subpart 2 for the eight-hour ozone standard, and all eight-hour ozone requirements for these areas remain in place.

2. Requirements Under the One-Hour Ozone Standard

In its June 8, 2007, decision, the Court limited its vacatur so as to uphold those provisions of EPA's anti-backsliding requirements that were not successfully challenged. Therefore, an area must meet the anti-backsliding requirements, *see* 40 CFR 51.900, *et seq.;* 70 FR 30592, 30604 (May 26, 2005), which apply by virtue of the area's classification for the one-hour ozone NAAQS.

The provisions in 40 CFR 51.905(a)–(c) explain the applicable 1-hour ozone anti-backsliding requirements that remain in effect. Areas must continue to meet those requirements to be redesignated. However, the court vacated the portions of 51.905(e) that removed the obligations to meet the additional provisions noted above and as a result, states also have had to continue to meet these additional requirements. We address below how the 1-hour anti-backsliding obligations (as interpreted and directed by the court) are met in the context of a redesignation action for the 1997 8-hour NAAQS.

The BPA 1-hour nonattainment area was reclassified as serious for that standard on June 15, 2004, so the 1-hour ozone standard requirements applicable to the area are those that apply to nonattainment areas classified as serious. Pursuant to 40 CFR 51.905(a)–(c) and the court opinions, the applicable serious area requirements include a demonstration that the area meets serious area Reasonably Available Control Technology (RACT) for both VOC and NO_X, a revised 1990 base year emissions inventory, a Post-1996 Rate of Progress (ROP) Plan with Contingency Measures and MVEB, a replacement, i.e., a backfill, for the failure-to-attain contingency measures triggered by the reclassification (this is equivalent to the requirement to meet the serious area contingency measure requirement), an enhanced monitoring program, a clean-fuel vehicle program or an acceptable substitute, an attainment demonstration with a reasonably available control measures (RACM) demonstration, revised transportation conformity budgets, and serious area NSR. The State has submitted each of the required 1-hour serious area plan requirements. EPA has approved each of the 1-hour serious area requirements except for the following: The attainment demonstration and RACM analysis, the CFV program or acceptable substitute, the ROP plan's contingency measures, the backfill failure-to-attain contingency measures, and the serious NSR requirements. The obligations to have an approved 1-hour ROP plan's contingency measures, backfill failure-to-attain contingency measures, and attainment demonstration with a RACM demonstration would be suspended by a determination of attainment of the 1-hour ozone standard, and will cease to apply upon redesignation of the area for the 8-hour standard. The 1-hour anti-backsliding serious Nonattainment New Source Review (NNSR) will also cease to apply upon redesignation for the 1997 8-hour ozone standard, and will be replaced by prevention of significant deterioration (PSD) SIP.

EPA is proposing to approve the following outstanding 1-hour ozone applicable requirement: The Texas CFV Program Equivalency Demonstration. EPA also is proposing to approve the Post-1996 ROP plan's contingency measures and the State's backfill failure-to-attain contingency measures. EPA has taken no action on the submitted attainment demonstration with the RACM analysis and serious 1-hour ozone NSR requirements. In lieu of nonattainment NSR, the BPA area will become subject to PSD upon redesignation.

For the BPA 1-hour ozone serious nonattainment area, EPA previously approved VOC and NO_X rules into the Texas SIP, found they met RACT, and found that the BPA area meets the serious area VOC and NO_X RACT requirements. EPA also previously approved the revised 1990 base year emissions inventory, the post-1996 ROP plan and MVEB, and the enhanced monitoring program. In this rulemaking, EPA is proposing to approve the State's CFV Equivalence Demonstration as meeting the outstanding 1-hour ozone anti-backsliding serious area requirement for the area. We also are proposing to approve the post-1996 ROP plan's contingency measures and the backfill failure-to-attain contingency measures. The obligation to submit a 1-hour serious area attainment demonstration and RACM analysis and contingency measures will be suspended if EPA's proposal to determine that the area has attained the 1-hour standard is finalized, and the area will be relieved of these obligations upon final redesignation for the 1997 8-hour ozone standard.

IV. What are the CAA criteria for redesignation?

The Act sets forth the requirements for redesignating a nonattainment area to attainment. Specifically, CAA section 107(d)(3)(E) allows for redesignation providing that (1) the Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and (5) the State containing such area has met all requirements applicable to the area under CAA section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, June 18, 1990.

2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

4. "Procedures for Processing Requests to Redesignate Areas to Attainment", Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air

Act (ACT) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

6. "Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas", Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992", Memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

V. What is EPA's proposed determination degarding attainment for the 1997 8-hour and the 1-hour ozone NAAQS for the BPA area?

A. Is the BPA area attaining the 1997 8-hour ozone NAAQS?

For ozone, an area may be considered to be attaining the 1997 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. This standard is attained if the 3-year average of the annual fourth highest daily maximum 8-hour average ambient ozone concentration at each monitor in the area that is eligible for comparison to the NAAQS is less than or equal to 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the 1997 8-hour ozone standard is attained at a monitor if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment. For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm $\times$ 1,000. Thus, 0.084 ppm equals 84 ppb.

EPA reviewed BPA area ozone monitoring data from ambient ozone monitoring stations for the ozone seasons 2005 through 2007, as well as data for the ozone seasons 2006 through 2008 and data for 2009 in AQS but not yet certified. The 2005–2007 ozone season data was relied upon by Texas in its submittal. Since the State's submittal, the 2006–2008 ozone season data has been quality assured and recorded in AQS. The design value for 2005–2007 is 0.083 ppm; the design value for 2006–2008 is 0.081 ppm. The preliminary design value for the additional year of 2009, i.e., the 2007–2009 ozone seasons, is 0.077 ppm. The data for all three sets of ozone seasons show that the BPA area is attaining the 1997 8-hour ozone NAAQS.

Table 1 provides the design values based on data from the nine monitors in the BPA area. Each of the nine monitoring sites in the BPA area monitored attainment with the 1997 8-hour ozone standard for the 2005–2007 ozone seasons and for the 2006–2008 ozone seasons. (To find the overall design value for the area for a given year, simply find the highest design value from any of the nine monitors for that year.) The location of each monitoring site in the BPA area is shown on the map entitled, "BPA ozone and ozone precursor monitoring network" included in the docket associated with this action.

TABLE 1—BPA AREA FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES DATA FOR ALL MONITORS (PPM) [1] [2] [3] [4]

BPA monitor site	4th Highest daily max					Design values three year averages		
	2005	2006	2007	2008	2009	2005–2007	2006–2008	2007–2009
Lamar (48–245–0009)	0.081	0.085	0.080	0.072	0.071	0.082	0.079	0.074
Port Arthur (48–245–0011)	0.079	0.085	0.073	0.071	0.073	0.079	0.076	0.072
Sabine Pass (48–245–0101)	0.082	0.084	0.078	0.069	0.073	0.081	0.077	0.073
Hamshire (48–245–0022)	0.080	0.081	0.077	0.070	0.070	0.079	0.076	0.072
West Orange (48–361–1001)	0.078	0.078	0.073	0.064	0.073	0.076	0.071	0.070
Mauriceville (48–361–1100)	0.076	0.071	0.075	0.069	0.067	0.074	0.071	0.070
Jefferson Co. Airport (48–245–0018)	0.083	0.084	0.082	0.078	0.071	0.083	0.081	0.077
SETRPC Port Arthur (48–245–0628)	0.078	0.082	0.076	0.065	0.069	0.078	0.074	0.070
Nederland (48–245–1035) [4]	.....	0.068	0.082	0.067	0.069	.....	0.072	0.072

[1] Unlike for the 1-hour ozone standard, design value calculations for the 1997 8-hour ozone standard are based on a rolling three-year average of the annual 4th highest values (40 CFR Part 50, Appendix I).

[2] Monitoring site locations for BPA are shown on a map entitled, "BPA ozone and ozone precursor monitoring network" included in the docket.

[3] Monitoring data for 2009 are in AQS but not yet certified (as of March 26, 2010).

[4] Monitoring did not begin at the Nederland site until 2006.

The fourth high values for 8-hour ozone for 2005 through 2009, and the 3-year average of these values (i.e., design value), are summarized in Table 2:

TABLE 2—BPA AREA FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES DATA SUMMARY (PPM) [1] [2] [3]

BPA area overall	4th highest daily max					Design values three-year averages		
	2005	2006	2007	2008	2009	2005–2007	2006–2008	2007–2009
	0.083	0.084	0.082	0.078	0.071	0.083	0.081	0.077

[1] Unlike for the 1-hour ozone standard, design value calculations for the 8-hour ozone standard are based on a rolling three-year average of the annual 4th highest values (40 CFR Part 50, Appendix I).
[2] Monitoring data for 2009 are in AQS but not yet certified (as of March 26, 2010).
[3] The fourth high data in this table is from the Jefferson Co. Airport monitor site (AQS 48–245–0018).

As shown in Table 2, the 8-hour ozone design value for 2005–2007, and also for 2006–2008, which is based on a three-year average of the fourth-highest daily maximum average ozone concentration at the monitor recording the highest concentrations, is below the 1997 8-hour ozone NAAQS. The design values of 0.083 ppm for 2005–2007 and 0.081 ppm for 2006–2008 demonstrate the area is in attainment of the 1997 8-hour ozone NAAQS. Data through 2008 have been quality assured, as recorded in AQS. Data for 2009 not yet certified also indicate that the area continues to attain the 1997 8-hour NAAQS. The preliminary design value for the BPA area for 2007–2009 is 0.077 ppm. In summary, monitoring data for BPA for the three years 2005 through 2007, as well as monitoring data for the three years 2006 through 2008 and preliminary monitoring data for 2009, show continued attainment of the 1997 8-hour ozone standard. Preliminary data for BPA for 2009 is included in the docket.

In addition, as discussed below with respect to the maintenance plan, Texas has committed to continue monitoring in this area in accordance with 40 CFR part 58. In summary, EPA is proposing to determine that complete, quality-assured data for the 2005–2007 and 2006–2008 ozone seasons show that the BPA 8-hour ozone nonattainment area has attained the 1997 8-hour ozone NAAQS and data for 2009 in AQS but not yet certified show that the area continues to attain the standard.

Should the area violate the 1997 8-hour ozone standard before the proposed redesignation is finalized, EPA will not proceed with final redesignation.

B. Is the BPA area attaining the 1-hour ozone NAAQS?

EPA is also proposing to determine that the BPA 1-hour ozone nonattainment area is currently attaining the 1-hour ozone NAAQS. This determination is based upon three years of complete, quality-assured and state- certified ambient air monitoring data that show the area has monitored attainment of the 1-hour ozone NAAQS for the 2006–2008 monitoring period. Data for 2009 in AQS but not yet certified indicate that that the area continues in attainment for the 1-hour standard.

In 1979, EPA promulgated the revised 1-hour ozone standard of 0.12 parts per million (ppm) (44 FR 8202, February 8, 1979). For ease of communication, many reports of ozone concentrations are given in parts per billion (ppb); ppb = ppm $\times$ 1000. Thus, 0.12 ppm becomes 120 ppb or 124 ppb when rounding is considered.

An area exceeds the 1-hour ozone standard each time an ambient air quality monitor records a 1-hour average ozone concentration above 0.12 ppm in any given day. Only the highest 1-hour ozone concentration at the monitor during any 24-hour day is considered when determining the number of exceedance days at the monitor. An area violates the ozone standard if, over a consecutive 3-year period, more than 3 expected exceedances occur at the same monitor. For more information, please see "National 1-hour primary and secondary ambient air quality standards for ozone" (40 CFR 50.9) and "Interpretation of the 1-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone" (40 CFR Part 50, Appendix H).

The fourth-highest daily ozone concentration over a 3-year period is called the design value (DV). The DV indicates the severity of the ozone problem in an area; it is the ozone level around which a state designs its control strategy for attaining the ozone standard. A monitor's DV is the fourth highest ambient concentration recorded at that monitor over the previous 3 years. An area's DV is the highest of the design values from the area's monitors.

The Act, as amended in 1990, required EPA to designate as nonattainment any area that was violating the 1-hour ozone standard, generally based on air quality monitoring data from the 1987 through 1989 period (section 107(d)(4) of the Act; 56 FR 56694, November 6, 1991).

EPA is proposing to determine that the BPA 1-hour ozone nonattainment area is currently in attainment of the 1-hour standard based on the most recent 3 years of quality-assured air quality data. Certified ambient air monitoring data show that the area has monitored attainment of the 1-hour ozone NAAQS for the 2005–2007 as well as the 2006–2008 monitoring period. Also, data in AQS but not yet certified for 2009 show that the BPA area has monitored no exceedances in that year and continues to meet the 1-hour ozone standard. Table 3 contains the 1-hour ozone data for the BPA 1-hour ozone nonattainment area monitors that show that the area is currently attaining the 1-hour ozone NAAQS, consistent with 40 CFR Part 50, Appendix H.

TABLE 3—BEAUMONT-PORT ARTHUR AREA 1-HOUR OZONE DATA [1] [2]

BPA Monitor site	Number of exceedances					3-year exceedances			Design values (ppb)		
	2005	2006	2007	2008	2009	2005–2007	2006–2008	2007–2009	2005–2007	2006–2008	2007–2009
Lamar (48–245–0009)	0	0	0	0	0	0	0	0	106	106	98
Port Arthur (48–245–0011)	0	0	0	0	0	0	0	0	104	101	93
Sabine Pass (48–245–0101)[2]	1.2	0	0	0	0	0.4	0	0	107	102	96
Hamshire (48–245–0022)	0	0	0	0	0	0	0	0	97	97	95
West Orange (48–361–1001)	0	0	0	0	0	0	0	0	99	100	100
Mauriceville (48–361–1100)	0	0	0	0	0	0	0	0	96	96	87
Jefferson Co. Airport (48–245–0018)	0	0	0	0	0	0	0	0	104	102	99
SETRPC Port Arthur (48–245–0628)	0	0	0	0	0	0	0	0	98	98	95
Nederland (48–245–1035)		0	0	0	0		0	0		93	93

[1] Monitoring data for 2009 are in AQS but not yet certified (as of March 26, 2010).
[2] For the Sabine Pass site in 2005 the actual number of exceedances was 1 and the estimated number of exceedances was 1.2.

EPA proposes to find that the BPA 1-hour ozone nonattainment area has attained the 1-hour ozone standard.

VI. Does the BPA area have a fully approved SIP under section 110(k) for the section 110 and part D requirements of the CAA applicable for purposes of redesignation?

As discussed above in Section III, in evaluating a request for redesignation, EPA's long-held position is that those requirements expressly linked by statutory language with the attainment and reasonable further progress requirements do not apply if EPA determines that the area is attaining the standard. Additionally, it is EPA's interpretation of CAA section 107(d)(3)(E) that applicable requirements of the Act that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the *relevant* requirements of the Act that come due prior to the submittal of a complete redesignation request. *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004). *See* also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, Missouri); September 4, 1992 Calcagni memorandum; September 17, 1993 Michael Shapiro memorandum, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, MI).

Therefore, the applicable 1997 8-hour ozone standard requirements for the BPA area are those for a marginal, not a moderate nonattainment area. The State submitted a complete redesignation request for BPA on December 16, 2008, prior to the January 1, 2009 deadline for the submittal of the area's moderate area SIP requirements. Furthermore, since EPA is proposing to determine that the area has attained the 1997 8-hour ozone standard, under the principles enunciated in the General Preamble and pursuant to 40 CFR 51.918, if that determination is finalized, then the obligations to submit requirements related to attainment and RFP are not applicable for purposes of redesignation.

The requirements to submit for a moderate area, certain planning SIPs related to attainment, including attainment demonstration requirements [the reasonably available control measures (RACM) requirement of section 172(c)(1) of the Act, the reasonable further progress (RFP) and attainment demonstration requirements of sections 172(c)(2) and (6) and 182(b)(1) of the Act, and the requirement for contingency measures of section 172(c)(9) of the Act] would not be applicable to the area as long as it continues to attain the 1997 8-hour ozone NAAQS and would cease to apply upon redesignation to attainment.

In addition, in the context of redesignations, EPA has interpreted requirements related to attainment as not applicable for purposes of redesignation. For example, in the General Preamble EPA stated that:

> [T]he section 172(c)(9) requirements are directed at ensuring RFP and attainment by the applicable date. These requirements no longer apply when an area has attained the standard and is eligible for redesignation. Furthermore, section 175A for maintenance plans * * * provides specific requirements for contingency measures that effectively supersede the requirements of section 172(c)(9) for these areas. [General Preamble for the "Interpretation of Title I of the Clean Air Act Amendments of 1990," (General Preamble) 57 FR 13498, 13564 (April 16, 1992)].

See also Calcagni memorandum dated Sept. 4, 1992 ("The requirements for reasonable further progress and other measures needed for attainment will not apply for redesignations because they only have meaning for areas not attaining the standard." From the memorandum, section 4.b.i.).

Today, EPA is also proposing to approve the 2002 base year emissions inventory as meeting the marginal area applicable requirements of part D. In addition, EPA is proposing to approve the CFV program Equivalency Demonstration as meeting the only outstanding 1-hour ozone anti-backsliding obligation for purposes of redesignation. Furthermore, EPA is proposing to find that upon final approval of these two measures, the BPA area will have a fully approved SIP under CAA section 110(k) for redesignation purposes and it will meet all CAA section 110 and part D applicable requirements for purposes of redesignation for the 1997 8-hour ozone standard.

A. What are the general SIP requirements applicable for purposes of redesignation for the BPA area?

EPA's long-held interpretation of the Act is that section 110 general SIP elements not linked to an area's nonattainment status and classification are not applicable for purposes of redesignation. Section 110(a)(2) of title I of the Act delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations.

For example, CAA section 110(a)(2)(d) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states, but not Texas, to establish programs to address the

transport of air pollutants (NO_X SIP Call). Texas submitted a SIP revision to address interstate transport on May 1, 2008. The purpose of that SIP revision was to document that emissions from Texas' sources that may contribute to nonattainment in another state have been mitigated through existing control strategies. However, CAA section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation.

Further, EPA believes that the other CAA section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request.

We have reviewed Texas's SIP and have concluded that it meets the general SIP requirements under section 110 of the CAA to the extent they are applicable for purposes of redesignation. EPA has previously approved provisions of the Texas SIP addressing section 110 elements under the 1-hour ozone standard (40 CFR 52.2270–.2280). Further, in a certified letter dated April 4, 2008 (a copy of this letter and the enclosure to the letter are available in the docket), as well as in a SIP revision submitted May 1, 2008, Texas confirmed that the State continues to meet the section 110 requirements for the 8-hour ozone standard. EPA has not yet taken rulemaking action on these submittals; however, such approval is not necessary for redesignation.

B. What are the part D requirements applicable for purposes of redesignation for the BPA area?

EPA has reviewed the Texas SIP for the BPA area with respect to SIP requirements applicable for purposes of redesignation under part D of the Act for both the 1-hour ozone NAAQS and the 1997 8-hour ozone NAAQS. EPA believes that the Texas SIP for the BPA area contains approved SIP measures that meet the part D requirements applicable for purposes of redesignation, with the exception of the requirements for an approved emissions inventory and the CFV program Equivalency Demonstration, which we are proposing to approve in this rulemaking. Upon final approval of these requirements, the BPA area will meet all of the requirements applicable to the area for purposes of redesignation under part D of the Act.

The 1-hour and 1997 8-hour ozone applicable requirements are discussed in detail below.

1. What are the part D requirements applicable for purposes of redesignation for the BPA area under the 1-hour ozone standard?

The anti-backsliding provisions at 40 CFR 51.905(a)(1) prescribe one-hour ozone NAAQS requirements that continue to apply after revocation of the one-hour ozone NAAQS for former one-hour ozone nonattainment areas. Section 51.905(a)(1) provides that:

The area remains subject to the obligations to adopt and implement the applicable requirements defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of this section and except as provided in paragraph (b) of this section.

Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), provides that: Applicable requirements means that for an area that the following requirements, to the extent such requirements applied to the area for the area's classification under section 181(a)(1) of the CAA for the one-hour NAAQS at the time of designation for the eight-hour NAAQS, remain in effect:

(1) Reasonably available control technology (RACT).

(2) Inspection and maintenance programs (I/M).

(3) Major source applicability cut-offs for purposes of RACT.

(4) Rate of Progress (ROP) reductions.

(5) Stage II vapor recovery.

(6) Clean-fuel vehicle program under section 182(c)(4) of the CAA.

(7) Clean fuels for boilers under section 182(e)(3) of the CAA.

(8) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA.

(9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.

(10) TCMs under section 182(c)(5) of the CAA.

(11) Vehicle Miles Travelled (VMT) provisions of section 182(d)(1) of the CAA.

(12) NO_X requirements under section 182(f) of the CAA.

(13) Attainment demonstration or alternative as provided under section 51.905(a)(1)(ii).

In addition to applicable requirements listed under section 51.900(f), the State must also comply with the additional 1-hour anti-backsliding requirements discussed in the Court's decisions in *South Coast Air Quality Management Dist.* v. *EPA:* (1) NSR requirements based on the area's 1-hour ozone nonattainment classification; (2) section 185 source penalty fees; (3) contingency measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the CAA for areas not making reasonable further progress toward attainment of the one-hour ozone NAAQS, or for failure to attain the NAAQS; and, (4) transportation conformity requirements for certain types of Federal actions.

Pursuant to 40 CFR 51.905(c), the area is subject to the obligations set forth in 51.905(a) and 51.900(f). The following addresses the one-hour ozone SIP requirements applicable to the BPA area pursuant to these anti-backsliding requirements and those discussed in the Court's decision in *South Coast Air Quality Management Dist.* v. *EPA.*

Prior to the revocation of the one-hour ozone standard on June 15, 2005, the BPA area was classified as a serious nonattainment area for the one-hour ozone standard with a compliance date of November 15, 2007. In reviewing the State of Texas' 1997 8-hour ozone redesignation request for the BPA area, we assessed whether the area satisfied the CAA anti-backsliding requirements under the one-hour ozone standard. We conclude that the BPA area and the State of Texas have satisfied all anti-backsliding CAA requirements applicable to a serious one-hour ozone nonattainment area for purposes of redesignation, except for the CFV program or an acceptable substitute under section 183(c)(4) of the CAA. *See* 40 CFR 51.905 (6). Today, we are proposing to approve the State's equivalency CFV demonstration. *See* below.

The following discusses how the applicable CAA requirements have been met in the BPA area. Note that the State commits to continue to comply with these requirements unless revised through SIP revisions approved by the EPA.

40 CFR 51.905 (1) and (3). RACT and Major source applicability cut-offs for purposes of RACT. EPA found that the BPA area met the serious area VOC and

NO_X RACT requirements for the 1-hour standard on July 10, 2009 (74 FR 33146). This action also approved Texas' changes to the batch process rules and the shipbuilding and ship repair rules that lower the threshold for affected sources of VOC emissions to the serious area requirements of 50 tons per year (tpy). This July 10, 2009 approval action satisfies the 1-hour ozone serious RACT requirements for the BPA area.

40 CFR 51.905 (2). Inspection and maintenance programs (I/M). There is no requirement for the BPA area to have an I/M program. The Federal I/M Flexibility Amendments of 1995 determined that urbanized areas with populations less than 200,000 for 1990 (such as BPA) are not mandated to participate in the I/M program (60 FR 48033, September 18, 1995).

40 CFR 51.905 (4). Rate of progress reductions. We approved the post-1996 ROP Plan and its associated MVEB and a revised 1990 base year emissions inventory on February 22, 2006 (71 FR 8962) for the BPA serious 1-hour ozone nonattainment area. This plan covered the 3-year periods of 1997–1999, 2000–2002, and 2003–2005, achieving 27 percent reductions no later than November 15, 2005.

40 CFR 51.905 (5) Stage II vapor recovery. EPA approved Texas' Stage II rules and amendments for the BPA area on April 15, 1994 (59 FR 17940), and as revised on March 29, 2005 (70 FR 15769).

40 CFR 51.905 (7) Clean fuels for boilers under section 182(e)(3) of the CAA. This is an extreme area requirement and therefore does not apply to the BPA serious area.

40 CFR 51.905 (8) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA. This is an extreme area requirement and therefore does not apply to the BPA serious area.

40 CFR 51.905 (9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA. EPA approved the Texas SIP revision for enhanced ambient monitoring on October 4, 1994 (59 FR 50504) as meeting section 182(c)(1) of the CAA. The monitoring network meets the requirements in 40 CFR Part 58 and section 182(c)(1) for enhanced monitoring.

40 CFR 51.905 (10) TCMs under section 182(c)(5) of the CAA. As required by the Clean Air Act section 176(c) (42 U.S.C. 7506(c)), the Southeast Texas Regional Planning Commission, the Metropolitan Planning Organization for the BPA area, demonstrated conformity of area transportation plans to the motor vehicle emissions budgets established in the BPA Rate-of-Progress SIP approved by EPA on February 22, 2006 (71 FR 8962). The Federal Highway Administration determined on September 25, 2007 that the area transportation plans conformed to the budgets established by the SIP. The current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters were determined, as part of the conformity analysis, to be consistent with those used for the area's demonstration of progress towards attainment.

40 CFR 51.905 (11) Vehicle miles traveled (VMT) provisions of section 182(d)(1) of the CAA. This is a severe area requirement and therefore does not apply to the BPA serious area.

40 CFR 51.905 (12) NO_X requirements under section 182(f) of the CAA. These requirements were satisfied by a previous EPA action approving a Texas SIP revision for NO_X controls in the BPA area on March 3, 2000 (65 FR 11468).

40 CFR 51.905 (13) Attainment demonstration or alternative as provided under section 51.905(a)(1)(ii). Texas elected the option to submit an 8-hour ozone attainment demonstration SIP to demonstrate attainment of the 8-hour ozone standard by the area's 8-hour ozone attainment date with associated MVEBs and an RACM analysis. The SIP was submitted to EPA on November 16, 2004, as revised on October 15, 2005. EPA has not acted on it. As discussed previously, EPA's long-held position is that an attainment demonstration with the RACM analysis is not an applicable requirement for purposes of evaluating an ozone redesignation request. (General Preamble, 57 FR 13564.) *See* also 40 CFR 51.918. Upon the effective date of redesignation, the obligation is terminated. Moreover EPA is proposing to determine that the area has attained the 1-hour ozone standard, and for that reason as well, if the determination is finalized, the area would not be obligated to submit a 1-hour attainment demonstration.

South Coast Anti-Backsliding Measures

NSR. EPA has long held its position that a fully-approved NSR program is not an applicable requirement for purposes of evaluating an ozone redesignation request. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation dated October 14, 1994, titled, "Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment." The State's PSD program becomes effective in the area immediately upon redesignation to attainment.[2] Consequently, EPA concludes that an approved NSR program is not an applicable requirement for purposes of redesignation. See the more detailed explanations of this issue in the following rulemakings: Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorain, Ohio (61 FR 20458, 20469–20470, May 7, 1996); Louisville, Kentucky (66 FR 53665, 53669, October 23, 2001); Grand Rapids, Michigan (61 FR 31831, 31836–31837, June 21, 1996).

Section 185 fees. This is a requirement for severe and extreme areas only, and therefore does not apply to the BPA serious area.

Contingency Measures. Sections 172(c)(9) and 182(c)(9) of the CAA require ozone control plans to contain measures to be implemented in the event that any RFP or attainment milestone in the ozone control plan is missed. EPA approved the 1-hour ozone contingency measures for the BPA area on February 10, 1998 at 63 FR 6659 as part of EPA's approval of the BPA area's 1-hour ozone 15% VOC ROP Plan. These contingency measures included the Federal Tier I rules, the Federal small engine VOC rule, and excess reductions from the 15% VOC ROP Plan. When EPA reclassified the BPA area to serious for the 1-hour ozone NAAQS, these are the contingency measures that EPA triggered. EPA is proposing to approve the post-1996 ROP plan's associated contingency measures, submitted to EPA on November 16, 2004. The contingency measures are federal and state measures already being implemented that are in excess of those needed for ROP and are sufficient to provide the needed contingency measure reductions. For more information, *please see* Section X. and TSD Part II.E. found in the electronic docket.

As noted elsewhere in this proposed rule, it is EPA's position that contingency measures are not an applicable requirement for purposes of evaluating an ozone redesignation request. EPA's long-held position is that those requirements expressly linked by statutory language with the attainment and reasonable further progress do not apply when an area requesting redesignation is attaining the standard.

For more detail of the applicable 1-hour ozone requirements and EPA's approval actions, see Part II.A. of the

[2] If the State believes that a rule change is required, it must adopt and submit it to EPA for approval as a SIP revision. Upon EPA's approval of the SIP revision submittal, PSD applies in the area.

TSD, which is included in the electronic docket.

As previously noted, it is EPA's position that further EPA action is required upon one 1-hour ozone serious area requirement: The CFV program or substitute. A summary of the Texas submittals and EPA's proposed action follows. More detail on the contents of the submittals and EPA's technical analysis may be found in the TSD, Part II.A.

Clean-Fuel Vehicle Program (Including Centrally Fueled Fleets Requirements)

(i) What are the Clean-fuel vehicle program requirements?

The 1990 CAA amendments established the clean-fuel vehicle (CFV) program that requires clean alternative fuels for a "covered fleet" in order to reduce emissions in certain ozone and carbon monoxide nonattainment areas. A "covered fleet" means a fleet that has ten or more vehicles that are either centrally fueled or capable of being centrally fueled. For serious ozone nonattainment areas, States are required to either adopt the CFV program prescribed under CAA part C of title II, or implement a substitute for the program that demonstrates equivalent long-term reductions in ozone-producing emissions within 1 year after reclassification (CAA sections 182(c)(4) and 246(a)(3)). CAA section 246 describes the requirements for Centrally Fueled Fleets (CFF). EPA may adjust the compliance deadlines where compliance with such deadlines would be infeasible. (CAA section 246(a)(3).) Currently, the federal CFF program requires 70% of new light duty vehicles and trucks and 50% of new heavy-duty vehicles in a covered fleet to meet certain prescribed exhaust emission standards for light duty vehicles, light duty trucks and heavy-duty vehicles. (CAA section 246(b)(3).) EPA has determined that, beginning with the 2006 model years, both the Tier II conventional vehicle and engine standards and heavy-duty vehicle and engine standards are either equivalent to or more stringent than the applicable CFV program Low Emission Vehicle (LEV) standards. *See* EPA Dear Manufacturer Letter CCD–05–12 (LDV/LDT/MDPV/HDV/HDE/LD–AFC) (July 21, 2005).

(ii) What are the CFV program requirements for the BPA area?

The March 30, 2004, reclassification of the area to serious nonattainment was effective April 29, 2004, and required that a CFV program or substitute that would achieve equivalent reductions be submitted to EPA by April 29, 2005.

(iii) How did the State Meet the CFV Requirements for BPA?

The State addresses this CFV program requirement by making an equivalency demonstration showing that the Federal Tier II and heavy-duty vehicle and engine standards are more stringent than or equivalent to the CFV program LEV standards, beginning with the 2006 model year. Texas used the 2006 model year in the equivalency demonstration because it is the earliest full vehicle model year that would have been affected by a CFV program upon adoption of a program by April 29, 2005 (i.e., the 2006 model year would begin on September 1, 2005). The demonstration showed that the resulting emissions reductions from Tier II and the heavy-duty vehicle and engine standards meet or exceed the emissions reductions that a CFV program would provide in the BPA nonattainment area and, therefore, the implementation of the Tier II and heavy-duty standards serve as an adequate substitute for a CFV program.

Specifically, relying upon EPA's data, beginning with the 2006 model year, Texas shows Tier 2 Light-Duty Vehicles (LDVs), Light-Duty Trucks (LDTs 1–4), and Medium Duty Passenger Vehicles (MDPVs) certified to certain Tier 2 bin standards, to be equivalent to or more stringent than the CFV program LEV emission standards. In addition, Texas demonstrates that Tier 2 LDVs, LDTs 1–4, and MDPVs certified to other Tier 2 bin standards, are equivalent to or more stringent than the CFV program LEV emission standards. Texas performs a similar analysis, showing that standards for 2006 and later model years for Otto cycle and diesel heavy-duty vehicles ranging from 8501–14,000 Gross Vehicle Weight Rating are more stringent than the CFV program LEV emissions standards for these vehicles.

(iv) What is EPA proposing?

EPA is proposing to approve, under section 182(c)(4)(B) of the CAA, Texas' equivalency demonstration that emissions reductions under Tier II and the heavy-duty engine and vehicle standards achieve equivalent or greater emissions reductions than would be expected from implementation of the CFV Program in the BPA nonattainment area. This approval is supported by the determination made by EPA that the use of the 2006 model year as the first model year vehicles that would be covered by a CFV program in the equivalency demonstration is appropriate. Thus, new vehicles purchased by fleet operators for Model Years 2006 and beyond would necessarily achieve, as required by the Tier II and heavy-duty engine standards, as much or more reductions than if the State adopted a CFV program as required by the Act.

The reclassification required the program to be submitted by April 29, 2005. EPA has determined that starting the program on April 29, 2005 is infeasible under CAA section 246(a)(3) which allows EPA to adjust the implementation date of a CFV program where implementation would otherwise be infeasible. EPA has decided that implementation of a CFV program in the BPA nonattainment area would be infeasible for the following reasons. As earlier explained, as of July 2005, EPA had determined that beginning with the 2006 model year the Tier II and heavy-duty engine and vehicle standards were either equivalent or more stringent than the CFV program LEV standards. Thus, Texas would have been required to implement the CFV program for approximately 4 months (i.e., from April 29, 2005, when the program was due under the reclassification, to August 31, 2005 when the 2006 model year began). For model years 2006 and beyond, the program would have been unnecessary. EPA believes that it would have been infeasible for Texas to initiate and oversee the elaborate record-keeping and reporting requirements associated with this program for this 4-month period only. Additionally, we note that owners and operators of covered fleet would likely not have been inclined to comply with the requirements of a program with such limited duration. Please see the TSD: Part II.A. for further discussion of this requirement.

As noted above, with the exception of the CFV program, the BPA area currently has an approved SIP for all the 1-hour ozone anti-backsliding requirements applicable for purposes of redesignation. EPA is proposing to find that, if it finalizes approval of the CFV program Equivalency Demonstration, the BPA area will meet all 1-hour ozone anti-backsliding requirements applicable to the area for purposes of redesignation under section 110 and part D.

2. What are the part D requirements applicable for purposes of redesignation for the BPA area under the 1997 8-hour ozone standard?

Part D, subpart 2 applicable SIP requirements. For the reasons set forth above, no moderate area requirements applicable for purposes of redesignation for the 1997 8-hour ozone standard under part D, section 182(b) became due prior to the submission of the complete redesignation request, and therefore none are applicable to the Area for purposes of redesignation. If EPA

finalizes its proposed approval of the area's emissions inventory under section 182(a)(1), the area will have met all the requirements applicable under its prior marginal classification for purposes of redesignation.

In addition to the fact that no moderate area part D requirements applicable for purposes of redesignation became due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and NSR requirements as not requiring approval prior to redesignation.

Section 176 Conformity Requirements. Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other Federally supported or funded projects (general conformity). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. *See, Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001) (upholding this interpretation). *See* also, 60 FR 62748 (December 7, 1995, Tampa, Florida).

*NSR Requirement*s. EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect, since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment." Texas has demonstrated that BPA will be able to maintain the standard without a part D NSR program in effect, and therefore, Texas need not have a fully approved part D NSR program prior to approval of the redesignation request. Texas's PSD program will become effective in BPA upon redesignation to attainment (unless a rule change is necessary; *see* footnote 2). See, rulemakings for Detroit, Michigan (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorrain, Ohio (61 FR 20458, 20469–70, May 7, 1996); Louisville, Kentucky (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996).

Section 182(a)(1) Inventory requirements. The marginal requirements at section 182(a) and 40 CFR 51.915 require that the BPA 8-hour ozone area meet the emissions inventory requirements of section 182(a)(1). An emissions inventory is an estimation of actual emissions of air pollutants in an area. The emissions inventory consists of VOC and NO_X emissions, as they are ozone precursors.

The State submitted a base year emissions inventory on December 18, 2008 to EPA as part of the SIP revision for the BPA area. Texas prepared a comprehensive emissions inventory for the BPA for the baseline year of 2002. The 2002 base year emissions inventory includes all point, area, nonroad mobile, and on-road mobile source emissions. Table 4 lists the 2002 emissions inventory for the BPA area. EPA reviewed the 2002 base year inventory and determined that it was developed in accordance with EPA guidelines. For a full discussion of our evaluation, please refer to Part I.B. of the TSD, found in the electronic docket.

TABLE 4—BPA BASE YEAR EMISSION INVENTORY

[Tons/day]

2002 Base year inventory		
Source type	NO_X	VOC
Point	109.23	43.81
Area	7.54	50.11
On-road Mobile	45.84	13.32
Non-road Mobile	48.99	13.85
Total	211.60	121.09

EPA is proposing to approve the 2002 Base Year Emissions Inventory submitted by the State on December 18, 2008 as part of the Texas SIP for the BPA area. With the approval of the 2002 base year emissions inventory, it is EPA's position that the BPA area will meet all of the requirements for a marginal nonattainment area under the 1997 8-hour ozone standard.

Listed below are the other marginal area requirements that have already been met by the BPA area. For further information, please see Part II.A. of the TSD.

Section 182(a)(2)(A) RACT corrections. EPA approved the Texas RACT correction rules on March 7, 1995 at 60 FR 12438.

Section 182(a)(2)(B) I/M Program. There is no requirement for the BPA area to have an I/M program. The Federal I/M Flexibility Amendments of 1995 determined that urbanized areas with populations less than 200,000 for 1990 (such as BPA) are not mandated to participate in the I/M program (60 FR 48033, September 18, 1995).

Section 182(a)(2)(C) Permit programs and 182(a)(4) General Offset requirement. As noted previously, EPA has determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without a part D NSR program in effect, since PSD requirements will apply after redesignation.

Section 181(a)(3)(B) Emissions Statements. The emissions statement rules were approved on August 26, 1994 (59 FR 44036).

Thus, EPA proposes to find that the area has an approved SIP for all the 1997 8-hour ozone requirements applicable for purposes of redesignation, with the exception of the 2002 Base Year Emissions Inventory. EPA is proposing to find that, upon EPA's final approval of the BPA emissions inventory, the BPA area will meet all requirements applicable to the area for purposes of redesignation under section 110 and part D and have a fully approved applicable implementation plan for the area under section 110(k).

C. Does the BPA area have a fully approved applicable SIP under section 110(k) of the CAA for purposes of redesignation?

With the exceptions noted above for the 1-hour ozone CFV program and the 8-hour emissions inventory, EPA has fully approved the applicable Texas SIP for the BPA area, under section 110(k) of the CAA for all requirements applicable for purposes of redesignation. EPA may rely on prior SIP approvals in approving a redesignation request; *see* Calcagni Memorandum at p. 3; *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall,* 265 F.3d 426, plus any additional measures it may approve in conjunction with a redesignation action. *See,* 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Texas adopted and

submitted, and EPA fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the BPA area (e.g., 74 FR 33146, 71 FR 8962, 66 FR 26914, 63 FR 6659, 60 FR 12438).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the moderate area part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation. As set forth above, with the two exceptions noted, the area has met all other applicable requirements for purposes of redesignation under its prior marginal classification. Once EPA has finalized approvals of the 1-hour CFV program Equivalency Demonstrations and the 8-hour base year inventory, the area will have met all applicable requirements for purposes of redesignation for the 8-hour ozone standard.

VII. Are the air quality improvements in the BPA area due to permanent and enforceable emissions reductions?

EPA proposes to find that Texas has demonstrated that the observed ozone air quality improvement in the BPA area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other State-adopted measures.

In making this demonstration, the State presented several sets of data. First, the State provided a 2002 Periodic Emissions Inventory (PEI) for NO_X and VOC in the BPA area, and provided a comparison between the 2002 PEI and the 2005 Base EI. Second, the State analyzed the changes in VOC and NO_X emissions in the BPA area between the ozone standard violation year 2002 and one of the years in the period during which the area attained the standard, 2005. Finally, the State documented the VOC and NO_X emission control measures that have been implemented in the BPA area over the past 17 years.

A. Emissions Reductions as Shown by Emissions Inventory Data

Texas chose 2005 as the base attainment year, and compared 2002 VOC and NO_X emissions when the DV was 90 ppb, to the attainment year emissions, to show that emission reductions have occurred in the area, and have resulted in the ozone air quality improvement in the area. 2005 is the first year of the first three-year period demonstrating attainment. By 2005, NO_X emissions were estimated to have dropped by almost 30% and VOC emissions by 15% from 2002 levels. These significant decreases resulted in the improvement in ozone levels seen at the monitors.

The emissions for both years were derived from periodic VOC and NO_X emission inventories, which are prepared every three years. Based on the estimated emissions, TCEQ has documented several emission trends to show that permanent and enforceable emission controls in various source sectors are responsible for significant downward trends in VOC and NO_X emission totals in the BPA area. For a discussion of emission inventory preparation methods, see the discussion of the preparation of the 2005 base year emission inventories below.

To demonstrate that VOC and NO_X emissions decreased between one of the violation years (2002) and an attainment year (2005), TCEQ has documented BPA's VOC and NO_X emissions for 2002 and 2005 for all anthropogenic source sectors. Table 5 lists these emissions for the 2002 PEI and 2005 EI. Due to improved reporting and estimating techniques, flash emissions are better captured in the 2005 inventory. To compare values that are alike, VOC area source emissions for 2005 in Table 5 do not include flash emissions from upstream oil and gas production.

TABLE 5—A COMPARISON OF VOC AND NO_X EMISSIONS IN THE BPA AREA BY SOURCE CATEGORY FROM THE 2002 PEI AND THE 2005 BASE EI

[Tons per average ozone season day]

Emissions source category	2002	2005
VOC Emissions (tpd)		
Area	50.11	*42.59
Non-Road Mobile	13.85	4.96
On-Road Mobile	13.32	11.63
Point	43.81	42.68
Total	121.09	101.86
NO_X Emissions (tpd)		
Area	7.54	9.06
Non-Road Mobile	48.99	25.99
On-Road Mobile	45.84	45.60
Point	109.23	68.49
Total	211.60	149.14

*This figure represents the 2005 base inventory for area sources used in the maintenance plan not including flash emissions from upstream oil and gas production.

This comparison of emissions in the BPA area shows that NO_X emissions significantly declined between 2002 and 2005. In addition, VOC emissions in the BPA area also declined between 2002 and 2005. TCEQ has included this information as part of its demonstration that emissions reductions in the BPA area, for both NO_X and VOC between 2002 and 2005, explain the observed improvement in ozone concentrations. Further, the reductions between 2002 and 2005 can be attributed to permanent and enforceable reductions.

The most significant reductions documented in Table 5 were the reductions in Point Source NO_X. In 2000, Texas adopted additional NO_X control rules to further reduce NO_X emissions from electric utility power boilers (approximately 50% reduction) and from industrial boilers and process heaters (approximately 20 percent reduction). These reductions occurred in two stages, with two-thirds of the reductions occurring by May 1, 2003, and the remaining one-third by May 1, 2005. Federal emission control measures for on and off road emissions also have had significant impacts on VOC and NO_X emissions in the BPA area.

Based on the 2002 and 2005 nonattainment area emissions information provided by TCEQ, EPA concludes that VOC and NO_X emission totals have significantly declined in the nonattainment area during the 2002–2005 period. These emission reductions have contributed to attainment of the 1997 eight-hour ozone standard in this area. EPA concurs with Texas' conclusions that the emission controls, emissions inventories, and emissions trends support the conclusion that attainment in the area is due to permanent and enforceable emission reductions.

To further demonstrate that permanent and enforceable emission controls have reduced VOC and NO_X emissions, TCEQ also documented the trends in NO_X and VOC concentrations

in the BPA area, which is discussed in greater detail below.

B. Impact of Emissions Controls Implementation: Trend Analysis

To assess the impact of emission control implementation, TCEQ determined the VOC and NO_X ambient concentration trends at two monitors in the BPA area from 1991 to 2007. This included determining or projecting the VOC emissions for all seventeen years in this time period. NO_X trends during this period, for both monitors provided by TCEQ in the analysis, Beaumont (CAMS 2) and West Orange (CAMS 9), showed that the 95th percentile of concentrations decreased at both monitors, and that the average NO_X concentration remained relatively flat at Beaumont (CAMS 2) but has decreased at West Orange (CAMS 9). For VOC trends in the BPA area, since TCEQ's VOC data was limited, TCEQ included data provided by the SETRPC that show that average concentrations for both ethylene and propylene have decreased in the BPA area. The reduction in emissions and the corresponding improvement in ozone air quality over the assessed period can be attributed to the implementation of a number of emission control measures identified in the first part of this section above.

C. Permanent and Enforceable Emissions Controls Implemented

The following is a discussion of the permanent and enforceable emission controls that have been implemented in the BPA area. In Texas' 8-hour ozone redesignation request, the State documented all of the emission control rules or programs that have impacted VOC or NO_X emissions during the period 1991–2007.

1. Reasonably Available Control Techniques

Texas notes that a number of VOC and NO_X RACT rules developed in prior years have continued to provide additional VOC and NO_X emission reductions during the more recent years. For VOC controls, with the exception of the source categories covered by the most recently published CTGs (see a discussion of the new CTG RACT source categories below), Texas has adopted and implemented VOC RACT rules for source categories covered by older (prior to 2006) CTGs and for major non-CTG sources in Hardin, Jefferson and Orange Counties. All VOC RACT rules are contained in Chapter 115 of volume 30 of the Texas Administrative Code (30 TAC 115), and all NO_X RACT rules are contained in Chapter 117 of volume 30 of the TAC (30 TAC 117). All of these VOC and NO_X RACT rules have been approved by the EPA as revisions of the Texas SIP.

2. ROP Plans and Attainment Demonstration Plan

TCEQ states that the BPA are has met all of the one-hour ozone SIP obligations, including implementation of the VOC and NO_X emission control programs and rules needed to comply with Texas' one-hour ozone attainment demonstration for the BPA area and implementation of all emission control measures contained in the various ROP plans applicable to Hardin, Jefferson and Orange Counties. EPA approved the 15% ROP Plan on February 10, 1998 (63 FR 6659). EPA approved the Post-1996 VOC and NO_X ROP Plan on February 22, 2006 (71 FR 8962). The Post-1996 ROP Plan provided 27 percent reductions.

3. NO_X Control Rules

TCEQ developed NO_X emission control rules for electric industrial boilers, industrial boilers and process heaters, gas turbines, rich-burn stationary gas-fired internal combustion engines, nitric acid plants, and adipic acid plants in compliance with the CAA. These rules were adopted in 1993. Emission reductions resulted from these rules beginning in 1999.

TCEQ also adopted VOC rules for batch process and industrial wastewater sources and NO_X rules for lean-burn engines. These rules were adopted in 1999, with emissions reductions resulting from these rules beginning in 2001.

In 2000, Texas adopted additional NO_X control rules to further reduce NO_X emissions from electric utility power boilers (approximately 50% reduction) and from industrial boilers and process heaters (approximately 20 percent reduction). These reductions occurred in two stages, with two-thirds of the reductions occurring by May 1, 2003, and the remaining one-third by May 1, 2005.

4. Federal Emission Control Measures

TCEQ notes that other Federal emission control measures have had significant impacts on VOC and NO_X emissions in the BPA area. These Federal measures include the following.

Tier 2 Emission Standards for Vehicles and Gasoline Sulfur Standards. These emission control requirements result in lower VOC and NO_X emissions from new cars and light duty trucks, including sport utility vehicles. The Federal rules were phased in between 2004 and 2009. The EPA has estimated that, by the end of the phase-in period, the following vehicle NO_X emission reductions will occur nationwide: Passenger cars (light duty vehicles) (77 percent); light duty trucks, minivans, and sports utility vehicles (86 percent); and, larger sports utility vehicles, vans, and heavier trucks (69 to 95 percent). VOC emission reductions are expected to range from 12 to 18 percent, depending on vehicle class, over the same period. Although some of the emission reductions occurred by the attainment years (2005–2007) in the BPA area, additional emission reductions will occur during the maintenance period. For example, note that the Tier 2 emission standards for passenger vehicles weighing over 8,500 pounds were not implemented until 2008 or later.

Heavy-Duty Diesel Engine Rule. EPA issued this rule in 2000 (October 6, 2000, 65 FR 59895; Updated Emissions Standards for 2004 and Later Model Year Highway Heavy Duty Engines and Vehicles). This rule includes standards limiting the sulfur content of diesel fuel, which went into effect in 2004. A second phase took effect in 2007, which further reduced the highway diesel fuel sulfur content to 15 parts per million, leading to additional reductions in combustion NO_X and VOC emissions (January 18, 2001, 66 FR 5001; Heavy Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements). This rule is expected to achieve a 95 percent reduction in NO_X emissions from diesel trucks and busses.

Non-Road Diesel Rule. EPA issued this rule in 2004. This rule applies to diesel engines used in industries, such as construction, agriculture, and mining. It is estimated that compliance with this rule will cut NO_X emissions from non-road diesel engines by up to 90 percent. This rule is currently achieving emission reductions, but will not be fully implemented until 2010.

*Locomotives and Marine Compression-Ignition Engine*s. This EPA rule was issued March 14, 2008 and includes new emission standards for locomotives and marine diesel engines that will reduce NO_X emissions by about 80 percent compared with engines meeting the current standards. These new requirements have three parts: Tightening emission standards for existing locomotives and large marine engines when they are remanufactured, effective in 2008; establishing Tier III standards for new locomotives and marine diesel engines that were phased in beginning in 2009; and establishing more stringent Tier IV standards for new locomotives and marine diesel engines that will be phased in beginning in 2014.

Additional Federal programs. Additional federal programs for emissions reductions in the BPA area include Onboard Refueling Vapor Recover (ORVR) for light-duty vehicles, and Federal control through Maximum Achievable Control Technology (MACT) of Hazardous Air Pollutants emissions. Table 6 shows the federal emissions reductions programs in the BPA area for fuels and motor vehicles:

TABLE 6—BPA FEDERAL EMISSION REDUCTIONS PROGRAMS

Federal measures
○ Tier 2 Fuel and Vehicle Emission Standards.
○ Onboard Refueling Vapor Recovery (ORVR) for light-duty vehicles.
○ Heavy-Duty Engine and Vehicle and Fuel Standards.
○ Federal controls on certain nonroad engines.
○ Federal control through Maximum Achievable Control Technology (MACT) of Hazardous Air Pollutants emissions.
○ Volatile Organic Compound Emission Standards for Consumer Products.
○ Volatile Organic Compound Emission Standards for Architectural Coatings.
○ Locomotives and Marine Compression-Ignition Engines.

5. Additional State and Local Emission Reductions

Several local permanent and enforceable emission reductions have occurred through various mechanisms other than through RACT rules or through Federal emission control rules/programs. These State and Local measures, which are permanent and enforceable, include the following.

Texas Low Emission Diesel (TxLED) rule. Texas' TxLED rule reduces emissions of NO_X and other pollutants from diesel-powered motor vehicles and non-road equipment operating within 110 counties in the eastern half of Texas, including the BPA area. This rule was originally adopted by TCEQ in 2000 and revised in 2007, with compliance occurring over a range of years, beginning in 2005, and continuing through the beginning of 2008.

Texas Emission Reduction Plan (TERP). TERP, established in 2001, includes incentive grant programs to reduce NO_X emissions from internal combustion engines on mobile sources. Eligible grant projects include fleet expansions with cleaner engines, replacement of old vehicles and equipment, repower of old engines, and on-vehicle and on-site infrastructure for idle reduction, electrification, and deliver of alternative fuels. TCEQ explains in its submittal that, as of September 2007, the TERP program has awarded over $19 million for 58 projects in the BPA area, which are estimated to reduce NO_X emissions by more than 2.7 tons per day by 2009. In the BPA area, the projects funded thus far have resulted in NO_X reductions of 4,480 tons.

Agreed Orders. Although not relied upon by the State for showing attainment or RFP, Agreed Orders have also been important in reducing NO_X and VOC emissions in the BPA area. In December 2004, TCEQ adopted revisions to the BPA SIP to incorporate Agreed Orders in which six companies in the BPA area agreed to make enforceable measures that were not required. The six companies were ISP Elastomers; Mobil Chemical Company, a Division of Exxon Mobil Corporation; Huntsman Petrochemical Corp. of Port Arthur and also of Port Neches; Motiva Enterprises LLC; and Premcor Refining Group, Inc. The Agreed Orders included voluntary emissions reductions, air monitoring improvements, and other actions.

Table 7 shows the state and local emissions reductions programs in the BPA area.

TABLE 7—BPA STATE AND LOCAL EMISSION REDUCTIONS PROGRAMS

State and local measures
○ Texas Low Emission Diesel (TxLED).
○ Texas Emission Reduction Plan (TERP).
○ Prevention of Significant Deterioration.
○ Agreed Orders.

6. Controls To Remain In Effect

Texas commits to maintain all of the current emission control measures for VOC and NO_X after the BPA area is redesignated to attainment. Texas, through TCEQ's Chief Engineer's Office, Air Quality Division, and the Office of Compliance and Enforcement, has the legal authority and necessary resources to actively enforce against any violations of the State's air pollution emission control rules. After the BPA area is redesignated to attainment, TCEQ will implement NSR for major stationary sources and major modifications through the PSD program.

Summary.

As discussed above, local controls as well as national emission controls have contributed to the ozone air quality improvement in the BPA area. NO_X and VOC emissions have dropped substantially. Based on the above, EPA proposes to determine that Hardin, Jefferson, and Orange Counties and the State of Texas have met the requirement of section 107(d)(3)(E)(iii) of the CAA, and have demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions.

As noted above, Texas has committed to retaining all existing emission control measures that affect ozone levels in the BPA area after Hardin, Jefferson, and Orange Counties are redesignated to attainment of the 1997 eight-hour ozone NAAQS. All changes in existing rules subsequently determined to be necessary must be submitted to the EPA for approval as SIP revisions.

EPA thus proposes to find that the improvement in air quality in the BPA area is due to permanent and enforceable emissions reductions. Section 107(d)(3)(E)(iii).

VIII. Does Texas have a fully approvable 1997 8-hour ozone maintenance plan pursuant to section 175A of the CAA for the BPA area?

A. What is required in an ozone maintenance plan?

In conjunction with its request to redesignate the BPA 1997 8-hour ozone nonattainment area, the State of Texas included a SIP revision to provide for the maintenance of the 1997 8-hour ozone NAAQS in the BPA area for at least 10 years after redesignation to attainment. Section 107(d)(3)(E)(iv). Section 175A of the CAA sets forth the required elements of air quality maintenance plans for areas seeking redesignation to attainment of a NAAQS. Under section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves the redesignation to attainment. The State must commit to submit a revised maintenance plan within eight years after the redesignation. This revised maintenance plan must provide for maintenance of the ozone standard for an additional 10 years beyond the initial 10 year maintenance period. To address the possibility of future NAAQS violations, the maintenance plans must contain contingency measures, with schedules of implementation, as EPA deems necessary, to assure prompt correction of any future NAAQS violation. The September 4, 1992, Calcagni memorandum provides additional guidance on the content of maintenance plans.

An ozone maintenance plan should, at minimum, address the following: (1) The attainment VOC and NO_X emission inventories; (2) a maintenance demonstration showing maintenance for the 10 years of the maintenance period;

(3) a commitment to maintain the existing monitoring network; (4) factors and procedures to be used for verification of continued attainment; and, (5) a contingency plan to prevent and/or correct a future violation of the NAAQS.

B. How did Texas estimate the VOC and NO_X emissions for the attainment year and the projection years?

Sections 172(c)(3) and 182(b)(1) of the CAA require that the SIP include an inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emission inventory for an ozone nonattainment area contains VOC and NO_X emissions as these pollutants are precursors to ozone formation. TCEQ prepared a comprehensive emission inventory for the BPA area including point, area, on-road, and off-road mobile sources with the baseline year of 2005.

Texas developed its baseline 2005 Emissions Inventory by updating the 2002 Periodic Emissions Inventory (PEI) for NO_X and VOC in the BPA area. TCEQ initially submitted the 2002 PEI to EPA as part of the 2005 Dallas-Fort Worth 5% increment of progress SIP revision, but did not provide for public comment. Since then, Texas updated the inventory for area and nonroad emissions categories and provided the inventory for public comment. The emissions inventory for 2005 was included by Texas in its submittal to EPA on December 16, 2008, as part of its request to redesignate the BPA to attainment for the 1997 8-hour ozone NAAQS.

Texas' 2005 emissions inventory is listed in tables 2.5 and 2.6 of Texas' December 18, 2008, submittal, which is included in the docket for this action. The year 2005 was chosen by Texas as the base year for developing a comprehensive ozone precursor emissions inventory for which projected emissions could be estimated for 2011, 2014, 2017, and 2021. The use of 2005 is an appropriate choice because it is one of the years in the period that the area has monitored attainment (2005–2007). The 2005 base year and projected year emissions for Hardin, Jefferson and Orange Counties were determined using the following procedures:

Area Source Emissions. Area source emissions for the base year 2005 were determined using Texas' 2005 periodic inventory as the starting point, and then specific inventory categories and emissions were reviewed and updated with current methodologies and local activity data when it was available. TCEQ compiled the 2005 area source emissions inventory from several sources of data, including work from various research contracts, TCEQ's research, and the EPA's National Emissions Inventory. Area source emissions for future years were projected using EPA's Economic Growth Analysis (EGAS) 5.0 or other growth factors, in accordance with EPA guidance. More information about calculations related to area source emissions is available in Chapter 4 and Appendix B of Texas' December 16, 2008 submittal, which is included in the docket.

Point Source Emissions. Point source VOC and NO_X emissions for the base year 2005 were compiled from Texas' annual emission database, which is called the "State of Texas Air Reporting System" (STARS). TCEQ projected point source emissions for future years by applying projection factors, where applicable, for EGU and non-EGU point sources, incorporating adjustments for three refineries, which were permitted to expand operations, as well as making adjustments for emissions credits. More information about calculations related to point sources is available in Chapter 4 and Appendix E of Texas' December 16, 2008 submittal which is included in the docket.

On-road Emissions. Mobile source emissions were calculated by a contractor to TCEQ, the Texas Transportation Institute (TTI), an objective transportation research entity within the Texas A&M University system, using EPA's MOBILE 6.2.03 emission factor model and traffic data taken from a travel-demand model for the three-county BPA area. TCEQ has provided detailed information to document the calculation of on-road mobile source VOC and NO_X emissions for 2005, as well as for the projection years of 2011, 2014, 2017, and 2021 (Chapter 4 and Appendices C and D of TCEQ's December 18, 2008 submittal.)

Non-road Emissions. For the majority of non-road types of equipments, TCEQ estimated emissions for the 2005 base year and 2011 using a model developed by TCEQ called TexN that utilizes EPA's NONROAD MODEL 2005 using county specific activity data. Since TexN could only provide projections to 2013, TCEQ developed non-road emissions projections for 2014, 2017, and 2021 using EPA's National Mobile Inventory Model (NMIM). For aircraft, locomotives, and commercial marine vessels, TCEQ estimated VOC and NO_X emissions using growth factors specific to those industries. More information about calculations related to non-road sources is available in Chapter 4 and Appendix B of Texas' December 16, 2008 submittal, which is included in the docket.

C. Has the State demonstrated maintenance of the ozone standard in the BPA area?

As part of its request to redesignate the BPA 8-hour ozone nonattainment area, the State of Texas included a SIP revision to incorporate a maintenance plan as required under section 175A of the CAA. The maintenance plan includes a demonstration based on a comparison of emissions in the attainment year (2005) and projected emissions to demonstrate maintenance of the 1997 8-hour ozone NAAQS in the BPA area for at least 10 years after the anticipated redesignation year [section 107(d)(3)(E)(iv)]. To demonstrate maintenance of the 1997 8-hour ozone standard, TCEQ projected VOC and NO_X emissions to 2021 and to several interim years, 2014, and 2017. These emissions were compared to the 2005 attainment year emissions to show that emissions of NO_X and VOC, when considered together, remain below the attainment levels for the entire demonstrated maintenance period.

In the December 18, 2008, ozone redesignation request, TCEQ graphically represented and compared the VOC and NO_X emissions for 2005, 2011, 2014, 2017 and 2021 for all major source sectors, and in total for the BPA nonattainment area. In its ozone maintenance demonstration, TCEQ presented the NO_X and VOC emission totals for the 2005 base year and all projection years for the BPA area without the impacts of CAIR.[3] TCEQ's maintenance demonstration shows that in 2011, 2014, 2017, and 2021 (without the impacts of CAIR rules), VOC and NO_X emission totals for the BPA area, when considered together, are projected to be below the 2005 VOC and NO_X emissions for the area.

NO_X emissions in the BPA area are projected to decline by 14 percent between 2005 and 2021. Note that the projected NO_X emission reduction for 2020 did not include NO_X emission reductions resulting from CAIR, but did include NO_X emission reductions resulting from Texas' existing NO_X emission control rules that are in the

[3] The U.S. Court of Appeals, for the District of Columbia Circuit has remanded CAIR without vacatur, directing EPA to revise the CAIR rule. This leaves the current version of the CAIR rule in question and raises questions about the future emission impacts of States' CAIR-based emission control rules. As a conservative approach to this problem, EPA requested that TCEQ remove the impacts of the State's CAIR NO_X emission control rules. TCEQ complied, and by the time of the December 18, 2008, submittal had removed all emissions impacts due to CAIR in its projections.

Texas SIP. VOC emissions in the BPA area are projected to increase by approximately 6 percent between 2005 and 2021. However, based on photochemical modeling analyses showing that the formation of ozone in the BPA area is more sensitive to NO_X than to VOC emissions, the increase in VOC emissions is expected to be fully offset by the decrease in NO_X. Specifically, photochemical modeling analyses show that for reducing the ozone design value in the BPA area, reducing NO_X emissions is 3.76 times as effective as reducing VOC emissions. This is discussed more fully below. Based on this analysis, emissions in the BPA area are expected to remain at levels consistent with attainment for the 1998 8-hour ozone standard from 2010 through 2021.

The December 23, 2008, remand of EPA's CAIR by the U.S. Court of Appeals led to both the State and EPA further considering the impact of this remand on Texas' ozone maintenance demonstration for the BPA area. The CAIR was remanded to EPA, and the process of developing a replacement rule is ongoing. The remand of CAIR does not alter the requirements of the NO_X SIP call. Although Texas is not subject to the NO_X SIP call, Texas, however, has demonstrated that the BPA area can maintain the 1997 eight-hour ozone standard without any additional NO_X emission reduction requirements. Regarding the impact of pollution from other States, all NO_X SIP Call states have SIPs that currently satisfy their obligations under the SIP Call, the SIP Call reduction requirements remain applicable and are being met, and EPA will continue to enforce the requirements of the NO_X SIP Call even after any response to the CAIR Remand. As EPA has noted in other recent redesignation actions (e.g., Columbus Ohio, 74 FR 47404, 47405 (September 15, 2009)) "EPA believes that regardless of the status of the CAIR program, the NO_X SIP call requirements can be relied upon in demonstrating maintenance." Therefore, EPA believes that Texas' demonstration of maintenance under sections 175A and 107(d)(3)(E) of the CAA remains valid.

Texas has successfully demonstrated maintenance of the 1997 8-hour ozone standard between 2005 and 2021. In addition, VOC and NO_X emissions in the BPA area, when considered together with Texas' photochemical modeling analyses, are projected to decline between 2005 and 2021. Given the emissions growth and source control factors used to project emissions, EPA and Texas do not anticipate an increase in the overall combined VOC and NO_X emissions in the BPA area between 2010 and 2021.

The following table provides NO_X and VOC emissions data for the 2005 base year inventory, as well as projected NO_X and VOC emission inventory data for the years 2011, 2014, 2017, and 2021 for the BPA area. *Please see* Part II.B. of the TSD for additional emissions inventory data including projections by source category.

TABLE 8—BASE YEAR AND PROJECTED NO_X AND VOC EMISSIONS IN BPA, NO_X EMISSIONS (TPD)

[Without CAIR]

Source category	2005	2011	2014	2017	2021
Point	68.49	77.39	78.84	78.67	80.27
Area	9.06	9.95	10.40	10.86	11.47
Mobile	45.60	17.91	12.38	8.66	6.24
Nonroad	25.99	27.08	27.88	28.87	30.63
Total	149.14	132.33	129.50	127.06	128.61
VOC Emissions (TPD) [Without CAIR]					
Point	42.68	48.23	49.77	51.44	53.80
Area	151.57	155.77	157.06	158.63	160.77
Mobile*	11.63	7.92	6.51	5.58	4.77
Nonroad**	4.96	4.36	4.23	4.20	4.30
Total	210.84	216.28	217.57	219.85	223.64

* Calculated using MOBILE 6.2.03.
** Calculated using NONROAD 2005.

As shown in Table 8 above, total NO_X emissions are projected to decrease and total VOC emissions are projected to increase slightly for the area of the 10-year period of the maintenance plan. Emissions projections for future years in the area indicate a downward trend in NO_X emissions through 2021 as NO_X emissions are projected to decrease by 20.53 tpd, or approximately 14% (from 149.14 tpd to 128.61 tpd). VOC emissions projections through 2021 show a slight increase in projected emissions of 12.80 tpd by the year 2021, or approximately 6% (from 210.84 tpd to 223.64 tpd). This projected increase (6%) is relatively small considering that it occurs over a period of approximately sixteen years (as from the 2005 baseline). The slight upward trend in VOC emissions results from projected increases for the point and non-point (area) source emission categories. Emissions from non-road mobile and on-road mobile sources are projected to decrease.

As mentioned above, the projected 14% reduction (20.53 tpd) in NO_X emissions is expected to sufficiently offset the projected 6% increase (12.80 tpd) in VOC emissions, enabling the area to continue to maintain the 1997 ozone standard. Photochemical modeling analyses were submitted showing that reducing VOC emissions by 5.53 tpd results in an estimated design value reduction of 0.054 ppb. To reduce the ozone DV by 1 ppb, 102.4 tpd of VOC would need to be reduced. Reducing NO_X emissions by 7.80 tpd reduces the ozone DV by 0.287 ppb. This means that a reduction of 27.2 tpd of NO_X emissions would be required to reduce one ppb in the DV. Thus, NO_X emission reductions are expected to be 3.76 (102.4/27.2) times as effective in reducing the ozone DV as VOC emission reductions.

EPA proposes to conclude that TCEQ has demonstrated maintenance of the ozone standard during the 10-plus year maintenance period for the BPA area through projections of VOC and NO_X emissions that show that when

considered together the emissions will remain below the 2005 attainment levels during the maintenance period. This is demonstrated without the emission reductions from CAIR.

D. Monitoring Network

The State of Texas has committed in its maintenance plan for the BPA area to continue operation of an appropriate ozone monitoring network and to work with EPA in compliance with 40 CFR Part 58 with regard to the continued adequacy of the network, including whether additional monitoring is needed, and when monitoring can be discontinued.

There are five monitoring sites operated by the TCEQ in the BPA area, located in Jefferson and Orange Counties. TCEQ operates these monitors in accordance with the requirement of 40 CFR Part 58 and the EPA-approved Quality Assurance Program Plan.

There are four additional monitors operated by the South East Texas Regional Planning Commission (SETRPC). If the SETRPC, however, removes one of its monitors, the EPA and Texas will jointly review the adequacy of the network, including whether additional monitoring is needed. In the maintenance plan, Texas commits to continue operation of the five ozone monitors it operates in compliance with 40 CFR part 58 through the end of the maintenance period (2021). The State also commits to continue to operate a monitoring network in accordance with 40 CFR part 58 and to enter data into the Air Quality System in accordance with Federal guidelines. The TCEQ will continue to provide data from the SETRPC monitors on the Commission's Web site and in EPA's AQS database as long as the SETRPC participates in the network.

As identified in the maintenance plan, each of the nine monitoring sites in the BPA area monitored attainment with the 1997 8-hour ozone standard beginning in 2005. Data for each monitoring site was shown above and further discussed in Section V.A. Table 1. *See* the docket for a map of the BPA monitoring network, and the TSD: Part I.A. for additional monitoring information.

E. Verification of Continued Attainment

Texas has the legal authority to enforce and implement the requirements of the ozone maintenance plan for the BPA area. This includes the authority to adopt, implement, and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Texas will track the progress of the maintenance plan through continued ambient ozone monitoring in accordance with the requirements of 40 CFR Part 58, and by performing future reviews of actual emissions for the area using the latest emissions factors, models, and methodologies. (section 4.2 of TCEQ's BPA submittal, December 16, 2008). For these periodic updates of the BPA emissions inventories, Texas will review the assumptions made for the purpose of the maintenance demonstration concerning projected growth and activity levels.

F. What is the maintenance plan's contingency plan?

The section 175(A) maintenance plan includes contingency provisions to promptly correct any violation of the 1997 ozone NAAQS that occurs after redesignation. The contingency plan provisions are designed to promptly correct or prevent a violation of the NAAQS that might occur after redesignation of an area to attainment. Section 175A of the CAA requires that a maintenance plan include such contingency measures, as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation of the contingency measures, and a time limit for action by the state. The State should also identify specific indicators to be used to determine when the contingency measures need to be adopted and implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant(s) that were contained in the SIP before redesignation of the area to attainment. *See* section 175A(d) of the CAA.

As required by section 175A of the CAA, Texas has adopted a contingency plan for the BPA area to address possible future ozone air quality problems.

The contingency measure trigger for the BPA maintenance plan is based upon monitoring. The triggering mechanism for activation of contingency measures is a monitored violation of the 1997 ozone standard. In this maintenance plan, if contingency measures are triggered, TCEQ has committed to adopt and implement the measures as expeditiously as practicable, but no longer than 18 months following the trigger. In order to accomplish this, in the submittal Texas commits to adopt within nine months (and implement within eighteen months) one or more contingency measures to re-attain the standard in the event of a violation of the 1997 8-hour ozone NAAQS in the BPA area. The measures to be considered include, but are not limited to the following control measures:

- Revision to 30 TAC Chapter 117 to control rich-burn, gas-fired, reciprocating internal combustion engines to meet NO_X emission specifications and other requirements to reduce NO_X emissions and ozone air pollution.
- Inclusion of one or more counties in the BPA area in 30 TAC Chapter 115 VOC rules for the control of crude and condensate storage tanks at upstream oil and gas exploration and productions sites or midstream pipeline breakout stations with uncontrolled flash emissions greater than 25 tpy.
- Inclusion of one or more counties in the BPA area in 30 TAC Chapter 115 VOC rules for more stringent controls for tank fittings on floating roof tanks, such as slotted guidepoles and other openings in internal and external floating roofs.
- Inclusion of one or more counties in the BPA area in 30 TAC Chapter 115 VOC rules limiting emissions from landings of floating roofs in floating roof tanks.
- Inclusion of one or more counties in the BPA area in 30 TAC Chapter 115 VOC rules for control of emissions from degassing operations for storage tanks with a nominal capacity of 75,000 gallons or more storing materials with a true vapor pressure greater than 2.6 pounds per square inch absolute (psia), or with a nominal capacity of 250,000 gallons or more storing materials with a true vapor pressure of 0.5 psia or greater. Degassing vapors from storage vessels, transport vessels, and marine vessels would be required to vent to a control device until the VOC concentration of the vapors is reduced to less than 34,000 parts per million by volume as methane.
- Inclusion of one or more counties in the BPA area in 30 TAC Chapter 114 rule for TxLED compliant marine diesel.

In addition, the maintenance plan states that the BPA area may also be expected to voluntarily implement some additional local control measures.

These contingency measures and schedules for implementation satisfy EPA's longstanding guidance on the requirement of section 175(A) for continued attainment. Continued attainment in the Beaumont Port Arthur area will depend, in part, on the air quality measures discussed previously (*see* VI.B. and V.B.4. above). The State will continue to operate appropriate

ambient ozone monitoring sites in the BPA area to verify continued attainment of the 1997 ozone NAAQS. The air monitoring results will reveal changes in the ambient air quality as well as assist the State in determining which contingency measures will be most effective if necessary.

As required by section 175A(b) of the CAA, Texas commits to submit to the EPA an updated ozone maintenance plan eight years after redesignation of the BPA area to cover an additional ten-year period beyond the initial ten-year maintenance period. As required by section 175A(d) of the CAA, Texas has also committed to retain VOC and NO_X control measures contained in the SIP prior to redesignation.

EPA finds that the plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. The maintenance plan SIP revision submitted by Texas for BPA meets the requirements of section 175A of the Act. Therefore, EPA is proposing to approve the maintenance plan for the BPA area for the 1997 8-hour ozone standard as part of the Texas SIP.

IX. What is EPA's evaluation of the BPA area's motor vehicle emissions budget?

A. What are the transportation requirements for approvable MVEBs?

A maintenance plan must include a MVEB for transportation conformity purposes. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. It is a process required by section 176(c) of the Act for ensuring that the effects of emissions from all on-road sources are consistent with attainment or maintenance of the standard. EPA's transportation conformity rules at 40 CFR part 93 require that transportation plans, and programs, result in emissions that do not exceed the MVEB established in the SIP. The maintenance plan established an MVEB for 2021, which is the last year of the maintenance plan.

The MVEB is the level of total allowable on-road emissions established by the maintenance plan. Maintenance plans must include the estimates of motor vehicle VOC and NO_X emissions that are consistent with maintenance of attainment, which then act as a budget or ceiling for the purpose of determining whether transportation plans, and programs conform to the maintenance plan. In this case, the MVEB sets the maximum level of on-road transportation emissions that can be produced, when considered with emissions from all other sources, which demonstrates continued maintenance of attainment of the 1997 8-hour ozone NAAQS.

B. What is the status of EPA's adequacy determination?

When reviewing submitted "control strategy" SIPs or maintenance plans containing a MVEB, EPA determines whether the MVEB contained therein is "adequate" for use in determining transportation conformity. Once EPA finds a budget adequate, the budget must be used by local, state and federal agencies in determining whether proposed transportation plans and programs "conform" to the SIP as required by section 176(c) of the Act.

EPA's substantive criteria for determining "adequacy" of a MVEB are set out in 40 CFR 93.118(e)(4). The process for determining the adequacy of an MVEB was initially outlined in EPA's May 14, 1999, guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance was finalized in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; transportation conformity rule amendments—Response to Court Decision and Additional Rule Change," on July 1, 2004 (69 FR 40004). Additional information on the adequacy process for MVEBs is available in the proposed rule entitled, "Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes," 68 FR 38974, 38984 (June 30, 2003).

As discussed earlier, Texas' maintenance plan submission includes NO_X and VOC budgets for the year 2021. EPA reviewed the budgets through the adequacy process. The availability of the SIP submission with this 2021 MVEB was announced for public comment on EPA's adequacy Web page on April 15, 2009, at: *http://www.epa.gov/otaq/transp/conform/adequacy.htm.* The EPA public comment period on the adequacy of the 2021 MVEB for BPA closed on May 15, 2009. EPA did not receive any adverse comments on the MVEB. On April 1, 2010, EPA made a finding of adequacy for the 2021 MVEB included in this 8-hour ozone maintenance plan (75 FR 16456).

C. Is the MVEB approvable?

Table 9 shows the total projected transportation emissions for 2021, as submitted by Texas.

TABLE 9—BEAUMONT/PORT ARTHUR PROJECTED TRANSPORTATION EMISSIONS

[Tons per avg. ozone season day]

Pollutant	2005	2011	2014	2017	2021
NO_X	45.60	17.91	12.38	8.66	6.24
VOC	11.63	7.92	6.51	5.58	4.77

These transportation emissions are also represented in Table 8 of this notice as the "mobile" emissions portion of emission inventory data for the BPA area. As shown in Tables 8 and 9, substantial reductions in both NO_X and VOC transportation emissions are projected between 2005 and 2021. Further, as previously stated in this action, EPA finds that the State has demonstrated the future combined emissions levels of NO_X and VOC in 2011, 2014, 2017, and 2021 are expected to be similar to or less than the emissions levels in 2005. The projected transportation emissions for 2021 were used by Texas as the basis of the 2021 NO_X and VOC MVEB for the BPA area. These emissions are consistent with the maintenance plan demonstrating continued compliance with the 1997 ozone NAAQS for the 10-year period following redesignation to attainment.

Under 40 CFR 93.101, the term safety margin is the amount by which the total projected emissions from all sources of a given pollutant are less than the total emissions that would satisfy the applicable requirement for reasonable further progress, attainment, or maintenance. The attainment level of emissions is the level of emissions

during one of the years in which the area met the NAAQS. The safety margin can be allocated to the transportation sector; however, the total emissions must remain below the attainment level. Emission projections contained in the BPA maintenance plan show the 2021 inventory in the BPA area represents a 20.53 tpd decrease in NO_X emissions compared with 2005 (Table 4–2), while VOC emissions increase by 12.80 tpd (Table 4–1). Conservatively assuming a 1:1 ratio of NO_X/VOC emissions in the formation of O_3, the net total reduction in NO_X emissions is 7.73 tpd (Table 4–3). Texas has allocated one tpd of the NO_X emission reduction as a safety margin, which increases the 2021 MVEB for NO_X emissions from 6.24 tpd to 7.24 tpd. This is discussed in greater detail in Part II.D. of the TSD. EPA finds this to be an acceptable allocation.

The submitted NO_X and VOC MVEB for the BPA area is defined in Table 10 below.

TABLE 10—BEAUMONT/PORT ARTHUR NO_X AND VOC MVEB

[Summer season tons per day]

Pollutant	2021
NO_X	*7.24
VOC	4.77

*Includes an allocation of 1 tpd from the available NO_X safety margin.

Through this rulemaking, EPA is proposing to approve Texas' 2021 MVEB for VOCs and NO_X for the BPA area for transportation conformity purposes, because EPA has determined that the area maintains the 1997 8-hour ozone standard with the emissions at the levels of the budget. The submittal has met the adequacy criteria in 40 CFR 93.118(e)(4), and EPA has completed a comprehensive review of the maintenance plan, concluding that the overall plan demonstrates maintenance, is approvable and the budgets are consistent with the overall plan. Therefore, the budgets can be proposed for approval.

X. EPA's Evaluation of the Backfill Contingency Measures for the 1-Hour Ozone Failure-To-Attain Contingency Measures and the State's Request To Remove an Unimplemented VOC Rule From the Texas SIP

EPA approved the 1-hour ozone failure-to-attain section 172(c)(9) and 182(c)(9) contingency measures for the BPA area on February 10, 1998 at 63 FR 6659 as part of EPA's approval of the BPA area's 15% VOC ROP Plan. These contingency measures included the Federal Tier I rules, the Federal small engine VOC rule, and excess reductions from the 15% VOC ROP Plan. When EPA reclassified the BPA area to serious for the 1-hour ozone NAAQS, these are the contingency measures that EPA triggered. EPA approved a marine vessel-loading rule as part of the Texas SIP for the BPA area on January 26, 1999 (64 FR 3841). As written, it appears it is triggered upon an EPA finding of failure to attain, but it was not included in the SIP-approved contingency plan for the BPA area. EPA never approved it specifically as a section 172(c)(9) contingency measure nor did EPA approve it as a replacement for the 1998-approved contingency measures. In the **Federal Register** action for reclassification of the BPA area for the 1997 8-hour ozone standard to moderate, EPA refers specifically to the 1998-approved 1-hour contingency measures as the ones EPA triggered to be implemented for failure to attain (73 FR 14391, March 18, 2008). Also in the reclassification **Federal Register** action, EPA required the State to submit additional contingency measures to replace, i.e., backfill, the triggered contingency measures for its new serious area attainment deadline under section 182(c)(9). The State submitted two control measures on October 15, 2005, as a SIP revision to replace or backfill the triggered contingency measures as required by the reclassification notice. The proposed 1-hour section 182(c)(9) contingency measures are emissions reductions from:

(1) NO_X and VOC reductions from three companies in the BPA area through Agreed Orders, and (2) NO_X reductions from the Texas Emissions Reductions Program (TERP) projects.

EPA approved the Agreed Orders into the SIP on April 12, 2005 (70 FR 18995). The TERP program was approved as part of the Texas SIP on August 19, 2005 at 70 FR 48647 including the methodology for calculating SIP credits for the individual TERP control measures. TERP provides funding to offset the incremental costs of projects associated with reducing NO_X emissions from high-emitting internal combustion engines.

Together, reductions from these two control measures meet the 3 percent requirement for the 1-hour backfill failure-to-attain contingency measures. The NO_X reductions from the Agreed Orders and the TERP projects were not relied upon for ROP or attainment demonstration purposes and have already been implemented. *Please see* the TSD: Part II.E. for additional detail. EPA is proposing to approve the substitute control measures for the backfill failure-to-attain contingency measures. Although, as noted in the discussion above, the 1-hour anti-backsliding contingency measure obligation is suspended upon a final determination that the area is attaining the 1-hour ozone standard, and terminates upon a final redesignation of the area for the 8-hour ozone standard, EPA understands that TCEQ nonetheless wishes EPA to take action upon the submitted backfill measures. EPA notes that, after the area is redesignated to attainment for the 8-hour ozone NAAQS, these 1-hour contingency measures are replaced by the section 175A Maintenance Plan contingency measures.

Also, in this SIP revision, TCEQ submitted a request to remove from the Texas SIP, the "contingency" measure marine vessel loading rule (30 TAC § 115.219). This Texas marine vessel rule was approved into the Texas SIP but was never implemented by the State. As discussed above, this measure was not relied upon as part of a 172(c)(9) or 182(c)(9) contingency plans and was not triggered by the EPA as part of the reclassification notice.

Texas, in its SIP revision, made clear that the marine vessel loading rule should not be a part of the backfill failure to attain contingency plan required by the reclassification and that the two measures used to comprise this plan were an appropriate substitute for the marine vessel loading rule. In fact, Texas' sensitivity tests in photochemical modeling runs indicate that reductions of 1 tpd of NO_X are equivalent to reductions of 3.8 tpd of VOC in reducing ozone in the BPA area (TCEQ Attainment Demonstration SIP, received October 18, 2005, section 5.3.1, p. 5–4). The two backfill contingency measures are mostly NO_X reductions and would be expected to be more effective than the Marine Vessel Loading Rule, a VOC control in reducing ozone.

The SIP marine-vessel loading rule was never relied upon for demonstrating attainment, achieving reasonable further progress, or as a reasonable available control measure. It was not relied upon in the 15% VOC ROP plan or the post-1996 ROP plan. It was not relied upon in any of the submitted attainment demonstration SIPs. It also is not required to meet VOC RACT. EPA notes that since adoption by TCEQ, federal rules for marine vessel loading have been adopted and achieve much of the reductions that would have been achieved if the State rule had been triggered.

EPA has evaluated Texas' request to remove the marine vessel-loading rule from its SIP. For the reasons cited above, whereas the Texas rule was never

implemented or triggered as a contingency measure and whereas the rule is not needed to satisfy any other statutory requirements, EPA proposes that the Texas marine vessel-loading rule be removed from the Texas SIP.

XI. Proposed Actions

EPA is proposing several related actions under the Act for the BPA ozone nonattainment area, consisting of Hardin, Jefferson, and Orange counties. Consistent with the Act, EPA is proposing to determine that the BPA area has attained the 1997 8-hour ozone NAAQS and to approve a request from the state of Texas to redesignate the BPA area to attainment of the 1997 8-hour ozone standard. This determination is based on complete, quality-assured, and certified ambient air quality monitoring data for the 2005–2007 ozone seasons and 2006–2008 ozone seasons, as well as data for 2009 in AQS but not yet certified, that demonstrate that the 1997 8-hour ozone NAAQS has been attained in the area. EPA is also proposing to make a determination that the BPA area is meeting the 1-hour ozone standard. This determination is based on complete, quality-assured, and certified ambient air quality monitoring data for 2005–2007 ozone seasons and 2006–2008 ozone seasons, as well as data for 2009 in AQS but not yet certified, that demonstrate that the 1-hour ozone NAAQS has been attained in the area. Finalizing the 1-hour ozone attainment determination proposal will suspend the 1-hour anti-backsliding requirements for a 1-hour attainment demonstration and RACM analysis and contingency measures. These requirements will cease to apply if the area is redesignated to attainment for the 1997 8-hour ozone standard.

EPA is proposing to approve the 2002 base year emissions inventory. We are proposing to approve the State's CFV program equivalency demonstration. We are proposing to find that the BPA area, upon final approval of this emissions inventory and the CFV program equivalency determination, will meet all the applicable CAA requirements under section 110 and Part D for purposes of redesignation for the 1997 8-hour ozone NAAQS including all the applicable antibacksliding CAA requirements for a serious 1-hour ozone nonattainment area. Further, EPA is proposing to approve into the SIP, as meeting section 175A and 107(d)(3)(E)(iv) of the Act, Texas' maintenance plan for the BPA area for the 1997 8-hour ozone NAAQS. The maintenance plan shows maintenance of the standard through 2021. Additionally, EPA is proposing to approve the 2021 MVEB for NO_X and VOC submitted by Texas for the BPA area in conjunction with its redesignation request and maintenance plan.

Consequently, EPA is proposing to approve the State's request to redesignate the area from nonattainment to attainment for the 1997 8-hour ozone NAAQS. After evaluating Texas' redesignation request, EPA has determined that upon final approval of the above-identified SIP elements and the maintenance plan, the area will meet the redesignation criteria set forth in section 107(d)(3)(E) and section 175A of the Act. The final approval of this redesignation request would change the official designation in 40 CFR part 81 for the BPA area from nonattainment to attainment for the 1997 8-hour ozone standard. EPA also notes that if EPA's proposed determinations of attainment for the 1-hour and 8-hour ozone NAAQS are finalized, the requirements to submit certain planning SIPs related to attainment, including attainment demonstration requirements (the RACM requirement, the RFP and attainment demonstration requirements, and the requirement for contingency measures) are suspended as long as it continues to attain the NAAQS, and would cease to apply upon final redesignation.

EPA also is proposing to approve the Post-1996 ROP Plan's contingency measures and backfill failure-to-attain contingency measures, and the removal from the Texas SIP under section 110(l) of a VOC marine vessel loading contingency measure.

XII. Statutory and Executive Order Reviews

Under the Clean Air Act, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the Clean Air Act for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely do not impose additional requirements beyond those imposed by state law and the Clean Air Act. For that reason, these actions:

- Are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Nitrogen dioxides, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 5, 2010.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 2010–11694 Filed 5–14–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 75, No. 94
Monday, May 17, 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

Submission for OMB Review; Comment Request

May 12, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) 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; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food and Nutrition Service

Title: Performance Standards and Reporting SNAP Modernization Initiatives.

OMB Control Number: 0584–NEW.

Summary of Collection: The Food, Conservation, and Energy Act of 2008 (Pub. L. 110–234), amended Section 11 of the Food and Nutrition Act of 2008, (7 U.S.C. 2020), to include a provision for the Food and Nutrition Service (FNS) to develop standards for identifying major operational changes and for States to provide any information required by the U.S. Department of Agriculture (USDA). To inform USDA's development of such standards, this data collection will gather information from all 50 States and the District of Columbia in order to better understand how States are assessing performance of their modernization initiatives.

Need and Use of the Information: To obtain a broad view of the Supplemental Nutrition Assistance Program (SNAP) performance measures, staff from State and local SNAP offices and partner organizations will be asked to respond. Data will be collected via surveys of SNAP staff, telephone and in-person interviews of SNAP and partner staff, and aggregated administrative records collection from SNAP and partner agencies. The collected information will help FNS understand how performance standards and reporting are occurring in the States with respect to SNAP modernization. Without this data collection, FNS would not be able to effectively develop, monitor or assess standards for identifying operational changes.

Description of Respondents: State, Local, or Tribal Government; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 786.

Frequency of Responses: Reporting: Monthly: Other (one-time)

Total Burden Hours: 3,473.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–11682 Filed 5–14–10; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Notice of the Specialty Crop Committee's Stakeholder Listening Session

AGENCY: Research, Education, and Economics, USDA.

ACTION: Notice of stakeholder listening session.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App 2, the United States Department of Agriculture announces a stakeholder listening session of the Specialty Crop Committee, under the auspices of the National Agricultural Research, Extension, Education, and Economics Advisory Board (NAREEE).

DATES: The Specialty Crop Committee will hold the stakeholder listening session on May 25, 2010 from 9 a.m.–3 p.m.

ADDRESSES: The stakeholder listening session of the Specialty Crop Committee will take place at the San Antonio Marriott Riverwalk, 889 East Market Street, San Antonio, Texas 78205.

The public may file written comments before or up to two weeks after the listening session with the contact person identified in this notice at: The National Agricultural Research, Extension, Education, and Economics Advisory Board Office, U.S. Department of Agriculture, Room 344–A, Jamie L. Whitten Building, 1400 Independence Avenue, SW., Washington, DC 20250–2255.

FOR FURTHER INFORMATION CONTACT: David Kelly, Acting Executive Director, National Agricultural Research, Extension, Education, and Economics Advisory Board; *telephone:* (202) 720–4421; *fax:* (202) 720–6199; or *e-mail: David.kelly@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The Specialty Crop Committee was established in accordance with the Specialty Crops Competitiveness Act of 2004 under Title III, Section 303 of Public Law 108–465, as amended under the Food, Conservation, and Energy Act of 2008, under Title VII, Section 7103 of Public Law 110–246. This Committee is a permanent committee of the National Agricultural Research Extension, Education, and Economics Advisory Board. The Committee's charge is to

study the scope and effectiveness of research, extension, and economics programs affecting the specialty crop industry. The congressional legislation defines "specialty crops" as fruits, vegetables, tree nuts, dried fruits and nursery crops (including floriculture). In order to carry out its responsibilities effectively, the Committee is holding a stakeholder listening session. The listening session will elicit stakeholder input from industry and state representatives, researchers and educators, national organizations and institutions, local producers, and other groups about topics of relevance to research, extension or economics programs on which the Specialty Crop Committee is charged to report through the Board to the Secretary of Agriculture and Congress. The list of specific topics of interest is available on the Committee charge on the NAREEE Web site (*http://nareeeab.ree.usda.gov*). In addition, the Committee seeks input on the Specialty Crop Research Initiative priorities and program administration, as well as its interaction with any research undertaken by the state administered Specialty Crop Block Grant Program funded through the USDA. Several panel sessions will be organized to stimulate discussion, each relating to one or more specific issues delineated in the Committee's charge. Each panel will be followed with questions by Committee members and opportunity for brief presentations and general discussion from the floor. An open session for further brief presentations will also be scheduled. Succinct written comments by attendees and other interested stakeholders will be welcomed as additional public input before and up to two weeks following the listening sessions. All statements will become part of the official public record of the Board's Specialty Crop Committee.

In order to encourage input from a wide array of interested parties and stakeholders from diverse regions of the country, the Committee will host an additional listening session focused on the same topics. This session will be held in Sacramento, CA on June 10, 2010. Details regarding this meeting will be announced in the near future.

Done at Washington, DC, this 11th day of April 2010.

Molly Jahn,

Acting Under Secretary, Research, Education, and Economics.

[FR Doc. 2010–11690 Filed 5–14–10; 8:45 am]

BILLING CODE 3410–03–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Tuesday, May 18, 2010. 11 a.m.–12:15 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact Paul Kollmer-Dorsey at (202) 203–4545.

Paul Kollmer-Dorsey,

Deputy General Counsel.

[FR Doc. 2010–11778 Filed 5–13–10; 11:15 am]

BILLING CODE 8610–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting and Community Forum of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act, that an orientation and planning meeting of the New Jersey Advisory Committee will convene at 11 a.m. on Friday, June 18, 2010, at the Legislative Annex of the State House, 152 West State Street, Room L7 (second floor), Trenton, New Jersey 08625. The purpose of the orientation meeting is to review the rules of operation of the Advisory Committee. The purpose of the planning meeting is to plan future activities.

Members of the public are entitled to submit written comments; the comments must be received in the regional office by July 19, 2010. The address is Eastern Regional Office, 624 Ninth St., NW., Washington, DC 20425. Persons wishing to e-mail their comments, or who desire additional information should contact the Eastern Regional Office at 202–376–7533 or by e-mail to: *ero@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Eastern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, on 12 May, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–11699 Filed 5–14–10; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Iowa Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Iowa Advisory Committee to the Commission will convene on Thursday, June 17, 2010 at 2 p.m. and adjourn at approximately 4 p.m. (CST) at Iowa Agriculture Development Authority, 505 5th Avenue, Suite 327, Des Moines, IA 50319. The purpose of the meeting is to conduct a briefing and planning a future civil rights project.

Members of the public are entitled to submit written comments. The comments must be received in the regional office by July 16, 2010. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Persons wishing to e-mail their comments, or to present their comments verbally at the meeting, or who desire additional

information should contact Farella E. Robinson, Regional Director, Central Regional Office, at (913) 551–1400 (or for hearing impaired TDD 913–551–1414), or by e-mail to *frobinson@usccr.gov*.

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Central Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Central Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission and FACA.

Dated in Washington, DC, 12 May, 2010.

Peter Minarik,

Acting Chief, Regional Programs Coordination Unit.

[FR Doc. 2010–11700 Filed 5–14–10; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Green Technology Pilot Program.

Form Number(s): PTO/SB/420.

Agency Approval Number: 0651–0062.

Type of Request: Revision of a currently approved collection.

Burden: 6,850 hours annually.

Number of Respondents: 5,225 responses per year.

Avg. Hours per Response: The USPTO estimates that it will take the public between 1 hour and 10 hours, depending upon the complexity of the situation, to gather the necessary information, prepare the appropriate form for documents, and submit the information to the USPTO.

Needs and Uses: This information is required by 35 U.S.C. 2(b)(2), 122(c), 131 and 151 and administered by the USPTO through 37 CFR 1.102, 1.291 and 1.99. This information collection is necessary so that (i) patent applicants may participate in the new streamlined Examination Pilot Program for Green Technologies, (ii) the public may protest a pending application, and (iii) the public may make a submission in a published application.

Affected Public: Individuals or households; businesses or other for-profits; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail:

Nicholas_A_Fraser@omb.eop.gov.

Once submitted, the request will be publicly available in electronic format through the Information Collection Review page at *http://www.reginfo.gov*.

Paper copies can be obtained by:

- *E-mail:* *InformationCollection@uspto.gov.* Include "0651–0062 copy request" in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before June 16, 2010 to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A_Fraser@omb.eop.gov* or by fax to 202–395–5167, marked to the attention of Nicholas A. Fraser.

Dated: May 11, 2010.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2010–11688 Filed 5–14–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip from Germany: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Dennis McClure, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW Washington, DC 20230; (202) 482–5973.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 2009, we published a notice initiating an administrative review of the antidumping duty order on brass sheet and strip from Germany covering one respondent, Wieland–Werke A.G. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 19042 (April 27, 2009). The preliminary results of this review covering the period March 1, 2008, through February 28, 2009, were published on April 13, 2010. *See Brass Sheet and Strip From Germany: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 18801 (April 13, 2010). The final results of this administrative review were originally due no later than August 4, 2010. As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the final results of this review is currently August 11, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. On April 30, 2010, the Petitioners[1] requested that the deadline for the final results in this administrative review be extended by the full 60 days authorized. The Petitioners commented that sales and cost verification reports have not been issued, and that interested parties will need time to submit briefs. The Petitioners also commented that the Department will need time to hold a possible hearing.

Extension of the Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section

[1] The Petitioners include GBC Metals, LLC of Global Brass and Copper, Inc., doing business as Olin Brass, Heyco Metals, Inc., Luvata Buffalo, Inc., PMX Industries, Inc., and Revere Copper Products, Inc.

751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

In this proceeding, the Department agrees with the Petitioners that additional time is necessary to complete the final results of this administrative review. Because the Department had to reschedule its cost verification due to inclement weather, the Department intends to conduct its cost verification in July 2010. In order to ensure that interested parties have sufficient time to analyze and comment on the verification report, we determine it is not practicable to complete this administrative review within the original time limit. Consequently, the Department is extending the time limit for completion of the final results of this review by 60 days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due October 12, 2010, since the revised deadline falls on a Sunday and the following day is a federal holiday.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: May 11, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–11702 Filed 5–14–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services: Overview Information: National Interpreter Education Center for Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who are Deaf-Blind; Notice Inviting Applications for a New Award for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.160B

Dates:

Applications Available: May 17, 2010.

Deadline for Transmittal of Applications: July 1, 2010.

Deadline for Intergovernmental Review: August 29, 2010.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: This program provides a grant to an eligible entity to establish a national interpreter training program that will assist ongoing regional training centers to train a sufficient number of qualified interpreters in order to meet the communications needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

Priorities: These priorities are from the notice of final priorities for this program, published in the **Federal Register** on August 3, 2005 (70 FR 44841).

Definitions: For the purpose of these priorities, we use the following definitions:

Deaf means individuals who are deaf, hard of hearing, late deafened, or deaf-blind. The term makes no reference or judgment of preferred mode of communication or language preference.

Interpreter means individuals, both hearing and deaf, who provide interpreting or transliterating, or both, for deaf, hard of hearing, and deaf-blind individuals using a variety of languages and modes of communication including but not limited to American Sign Language, Conceptually Accurate Signed English, other forms of signed English, oral communication, tactile communication, and cued speech.

National Interpreter Education Center means a project supported by the Rehabilitation Services Administration (RSA) to— (1) Coordinate the activities of the Regional Interpreter Education Centers; (2) ensure the effectiveness of the educational opportunities offered by the Regional Interpreter Education Centers; (3) ensure the effectiveness of the program as a whole by evaluating and reporting outcomes; (4) provide technical assistance to the field on effective practices in interpreter education; and (5) provide educational opportunities for interpreter educators.

Novice interpreter means an interpreter who has graduated from an interpreter training program and demonstrates language fluency in American Sign Language and in English, but lacks experience working as an interpreter.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. This definition, which is mentioned in the Senate Report for the Rehabilitation Act Amendments of 1998, Senate Report 105–106 (Second Session 1998), is one way for States to determine if interpreters are sufficiently qualified and is based on the standard specified in regulations implementing titles II and III of the Americans with Disabilities Act of 1990.

Regional Interpreter Education Center means a coordinated regional center to provide quality educational opportunities for interpreters at all skill levels.

Training and *education* will be used interchangeably.

Absolute Priority: For FY 2010 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Priority One—National Interpreter Education Center.

The purpose of this priority is to support a National Interpreter Education Center (National Center) to coordinate the activities of the Regional Interpreter Education Center or Centers, to ensure the effectiveness of the educational opportunities offered by the Regional Interpreter Education Center or Centers, to ensure the effectiveness of the program as a whole by evaluating and reporting outcomes, to provide technical assistance to the field on effective practices in interpreter education, and to provide educational opportunities for interpreter educators. In conducting its activities, the National Center must ensure the provision of quality educational opportunities with substantial consumer involvement throughout the process and with a specific focus on interpreting for consumers of vocational rehabilitation (VR) services.

The National Center funded under this priority must do the following:

- Identify and promote effective practices in interpreter education and provide technical assistance to the Regional Interpreter Education Center or Centers and the field on effective practices in interpreter education.
- Provide educational opportunities (based on the model curriculum developed for interpreter educators under Grant Number H160C030001, *www.asl.neu.edu/TIEM.online/mm_curriculum.html*) to working interpreter educators who need to obtain, enhance, or update their training on effective practices in interpreter education and to new interpreter educators.
- Promote improved education of interpreters and coordinate the interpreter education activities of the Regional Interpreter Education Center or Centers by—

(1) Developing "Program Quality Indicators" for this program, including the Regional Interpreter Education Center or Centers, and measuring performance against these indicators;

(2) Conducting education needs assessments and, based on the results, developing educational activities for delivery through the Regional Interpreter Education Center or Centers;

(3) Collecting, analyzing, and reporting to RSA the pre- and post-assessment data of the educational activities conducted through the Regional Interpreter Education Center or Centers;

(4) Ensuring that educational opportunities are available to individuals from a variety of cultural and linguistic backgrounds and are sensitive to the needs of those audiences; and

(5) Ensuring that deaf consumers are involved in every aspect of the project.

• Develop effective products for use by the Regional Interpreter Education Center or Centers in support of their educational activities for interpreters (*e.g.,* CDs, DVDs, Web-based materials, etc.).

• Promote the educational activities of the Regional Interpreter Education Center or Centers and disseminate information to the field through activities such as—developing and maintaining a program Web site; providing materials to the RSA-sponsored National Clearinghouse on Rehabilitation Training Materials; developing and using Web-based activities such as e-newsletters, interpreter forums, consumer forums, events calendars, etc.; making presentations on results of project activities at national conferences related to interpreting and interpreter education; and making presentations on results of project activities at consumer conferences.

• Collect, evaluate, and report to RSA qualitative and quantitative data on the educational activities of the Regional Interpreter Education Center or Centers. Data must be based on clear, measurable goals that are clearly linked to results.

• Use the data about the individual educational activities to demonstrate overall program effectiveness. Data must be based on clear, measurable goals that are clearly linked to results.

• Coordinate all activities conducted under this program, including the activities of the National Center and the Regional Interpreter Education Center or Centers, to ensure effective use of resources and consistency of quality interpreter educational opportunities to individuals in all geographic areas of the country.

• Set aside 10 percent of the project's annual budget submitted to RSA to cover the costs of specific collaborative activities between the National Center and the Regional Interpreter Education Center or Centers including, but not limited to, travel, communications, materials development, Web site development, and other collaborative efforts.

Fourth and Fifth Years of Project:

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards. The Secretary will also consider the following:

• The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC, during the first half of the project's third year. A project must budget for the travel associated with this one-day intensive review.

• The timeliness and effectiveness with which all requirements of the award have been or are being met by the project.

• Evidence of the degree to which the project's activities have contributed to changed practices and improved the quality of interpreters.

Competitive Preference Priority: For FY 2010 this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets this priority over an application of comparable merit that does not meet the priority.

This priority is:

Priority Two—Programs Offering at Least a Bachelor's Degree in Interpreter Education.

Within the existing priority from 34 CFR 396.33, we are establishing a priority to support applications from postsecondary institutions that offer and have awarded at least a bachelor's degree in interpreter education.

Program Authority: 29 U.S.C. 772.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, and 99. (b) The regulations for this program in 34 CFR parts 385 and 396. (c) The notice of final priorities for this program, published in the **Federal Register** on August 3, 2005 (70 FR 44841).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $600,000.

Maximum Award: We will reject any application that proposes a budget exceeding $600,000 for a single budget period of 12 months. The Assistant Secretary may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States and public or nonprofit agencies and organizations, including institutions of higher education.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

Note: Under 34 CFR 75.562(c), an indirect cost reimbursement on a training grant is limited to the recipient's actual indirect costs, as determined by its negotiated indirect cost rate agreement, or eight percent of a modified total direct cost base, whichever amount is less. Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or charged to another Federal award.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/fund/grant/apply/grantaps/index.htm.* To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA 84.160B

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative [Part III] to the

equivalent of no more than 45 pages, using the following standards:

• A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (character per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: May 17, 2010.

Deadline for Transmittal of Applications: July 1, 2010.

Applications for grants under this competition must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII in this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice. Deadline for Intergovernmental Review: August 29, 2010.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the National Interpreter Education Center for Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who are Deaf-Blind, CFDA number 84.160B must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will

grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

- You do not have access to the Internet; or
- You do not have the capacity to upload large documents to e-Application; *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Traci DiMartini, U.S. Department of Education, 400 Maryland Avenue, SW., room 5027, Potomac Center Plaza (PCP), Washington, DC 20202–2800. *FAX:* (202) 245–7591.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* CFDA Number 84.160B, LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* CFDA Number 84.160B, 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210, 396.31, and 396.32 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve

the effectiveness of programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals.

The goal of the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program is to establish interpreter training programs or to assist ongoing training programs to train a sufficient number of qualified interpreters in order to meet the communications needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind.

As required by the absolute priority, grantees must develop and implement quality indicators and measure their performance against these indicators. In addition, RSA will use the following indicators for the National Interpreter Education Center project:

- The percentage of interpreter educators receiving educational opportunities (based on the model curriculum developed for interpreter educators under Grant Number H160C030001) from the National Center and who successfully completed those opportunities as demonstrated through pre- and post-activity assessments, the development of portfolios, etc.

- The extent to which the educational activities and products for delivery through the five Regional Interpreter Education Centers meet the clear, measurable goals that the grantee is required to establish. This may include, but is not limited to, providing a detailed list of organizations, individuals, and State VR agencies that received information related to the activities of both the National and Regional Interpreter Education Center projects.

- The degree to which the project's activities have contributed to changed practices and improved the quality of interpreters. In order to effectively measure this outcome the National Center must provide quantitative and qualitative examples describing how its activities, trainings, and publications improved the quality of interpreters.

- The percentage of all State VR agencies within a specific geographic region who receive publications, trainings, and technical assistance from both their Regional Interpreter Education Center and the National Center.

The National Center grantee must report annually to RSA on these indicators through its annual performance report.

VII. Agency Contact

For Further Information Contact: Traci DiMartini, U.S. Department of Education, Rehabilitation Services Administration, 400 Maryland Avenue, SW., Room 5027, PCP, Washington, DC 20202–2800. Telephone: (202) 245–6425 or by e-mail: *Traci.DiMartini@ed.gov.*

If you use a TDD, call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Service Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: May 12, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–11715 Filed 5–14–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of open teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the teleconference meeting (*i.e.,* interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Tuesday, June 1, 2010 by contacting Ms. Tracy Jones at (202) 219–2099 or via e-mail at *tracy.deanna.jones@ed.gov.* We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The teleconference site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

Date and Time: Tuesday, June 8, 2010, beginning at 1:00 p.m. and ending at approximately 3 p.m.

ADDRESSES: Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Room 412, Washington, DC 20202–7582.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Goggin, Executive Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington DC 20202–7582, (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Advisory Committee's mission in the Higher Education Opportunity Act of 2008 to include several important areas: access, Title IV modernization, early information and needs assessment and review and analysis of regulations. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The Advisory Committee has scheduled this teleconference to finalize the findings and recommendations of its upcoming report to Congress and the Secretary of Education, and conduct other business related to new members.

Space for the teleconference meeting is limited and you are encouraged to register early if you plan to attend. You may register by sending an e-mail to the following addresses: *tracy.deanna.jones@ed.gov.* Please include your name, title, affiliation, complete address (including internet and e-mail, if available), and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219–3032. You may also contact the Advisory Committee staff directly at (202) 219–2099. The registration deadline is Friday, June 4, 2010.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9:00 a.m. to 5:30 p.m. Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's Web site, *www.ed.gov/ACSFA.*

Dated: May 7, 2010.

William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 2010–11698 Filed 5–14–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Disability Rehabilitation Research Project (DRRP)—Center on Knowledge Translation (KT) for Employment Research (Center)

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133A–5.

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority for a DRRP.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the Disability and Rehabilitation Research Projects and Centers Program administered by NIDRR. Specifically, this notice proposes a priority for a DRRP. The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2010 and later years. We take this action to focus research attention on areas of national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 16, 2010.

ADDRESSES: Address all comments about this notice to Lynn Medley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5140, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

If you prefer to send your comments by e-mail, use the following address: *Lynn.Medley@ed.gov.* You must include the term "Proposed Priority for a DRRP on KT for Employment Research Findings" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Lynn Medley. *Telephone:* (202) 245–7338 or by *e-mail: Lynn.Medley@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: This notice of proposed priority is in concert with NIDRR's Final Long-Range Plan for FY 2005–2009 (Plan). The Plan, which was published in the **Federal Register** on February 15, 2006 (71 FR 8165), can be accessed on the Internet at the following site: *http://www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms of integrating research and practice; and (6) disseminate findings.

Invitation to Comment:

We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific topic that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice in Room 5142, 550 12th Street, SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC, time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

DRRP Program

The purpose of the DRRP program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended, by developing methods, procedures, and rehabilitation technologies that advance a wide range of independent living and employment outcomes for individuals with disabilities, especially individuals with the most severe disabilities. DRRPs carry out one or more of the following types of activities, as specified and defined in 34 CFR 350.13 through 350.19: research, training, demonstration, development, dissemination, utilization, and technical assistance. An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b). In addition, NIDRR intends to require all DRRP

applicants to meet the requirements of the *General Disability and Rehabilitation Research Projects (DRRP) Requirements* priority that it published in a notice of final priorities in the **Federal Register** on April 28, 2006 (71 FR 25472).

Additional information on the DRRP program can be found at: *http://www.ed.gov/rschstat/research/pubs/res-program.html#DRRP.*

Program Authority: 29 U.S.C. 762(g) and 764(a).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority:

This notice contains one proposed priority.

Center on Knowledge Translation (KT) for Employment Research Findings (Center).

Background:

The employment rate for individuals with disabilities is substantially lower than the rate for individuals without disabilities: 18.6 percent versus 63.3 percent, respectively, as of December 2009 (U.S. Department of Labor, 2009). This disparity in employment rates is across all age groups and for both men and women (U.S. Department of Labor, 2009).

To improve the employment outcomes for individuals with disabilities, employers, policy makers, vocational rehabilitation (VR) practitioners, individuals with disabilities, and other stakeholders need to make use of the best available research to inform practice and policy. With the notable exception of a body of experimental research that demonstrates the effectiveness of one model practice, the Individual Placement and Support model of supported employment for individuals with psychiatric disabilities (Bond, 2004; Loprest, 2007), many findings from research related to improving the employment outcomes of individuals with disabilities are preliminary in nature. Findings from preliminary, non-experimental research can, however, appropriately be used to guide further research, provide preliminary knowledge about a problem in the field, or direct resources and services to groups of individuals with the greatest needs.

NIDRR has adopted the conceptual framework of KT to help guide its effort to promote the effective use of research findings. KT in the NIDRR context refers to a multidimensional, active process of ensuring that new knowledge and products gained via research and development reach practitioners, employers, policy makers, and individuals with disabilities; are understood by these audiences; and are used to improve the employment outcomes and participation of individuals with disabilities in society. KT encompasses all steps from the creation of new knowledge to the synthesis, dissemination, and implementation of such knowledge (Canadian Institutes of Health Research, 2004), and is built upon continuing interactions and partnerships within and between different groups of knowledge creators and users. Knowledge synthesis is an important step within the KT process because it provides an understanding of a topic based on an integration of the relevant body of knowledge rather than a single research study.

Research findings related to improving employment outcomes of individuals with disabilities have not been extensively and systematically examined. Appraising and synthesizing this research can inform practice by providing practitioners information that can facilitate their use of currently available research findings and help them distinguish between promising practices and proven interventions. Effective research syntheses package information in ways that can be understood and used appropriately by different audiences and end users, and educate users about the strengths or limitations of specific findings. The identification of the best available research will also help highlight critical research gaps.

While research investigating effective KT methods and strategies has been conducted in other contexts such as public health and healthcare (Fixsen, Naoom, Blase, Friedman, & Wallace, 2005; Metcalfe *et al.,* 2001; Milner, Estabrooks, & Humphrey, 2005; Peterson, Rogers, Cunningham-Sabo, & Davis, 2007; Van Duyn *et al.,* 2007), there has been no previous research investigating effective approaches for identifying and promoting the use of research related to employment of individuals with disabilities. Determining which approaches and strategies are effective will be useful in ensuring that employment-related knowledge is incorporated into practice by individuals with disabilities, policy makers, employers, and VR practitioners.

References:

Bond, G. (2004). Supported Employment: Evidence for an Evidence-Based Practice. Psychiatric Rehabilitation Journal, 27(4), 345–359.

Canadian Institutes of Health Research. (2004). Knowledge translation strategy 2004–2009: Innovation in action. See *http://www.cihr-irsc.gc.ca/e/26574.html.*

Fixsen, D.L., Naoom, S.F., Blase, K.A., Friedman, R.M., & Wallace, F. (2005). Implementation Research: A Synthesis of the Literature. Tampa, FL: University of South Florida, Louis de la Parte Florida Mental Health Institute, The National Implementation Research Network (FMHI Publication #231).

Loprest, P. (2007). Strategic assessment of the state of the science in research on employment for individuals with disabilities. Washington, DC: The Urban Institute.

Metcalfe, C., Lewin, R., Wisher, S., Perry, S., Bannigan, K., & Moffett, J.K. (2001). Barriers to implementing the evidence base in four NHS therapies: dietitians, occupational therapists, physiotherapists, and speech and language therapists. Physiotherapy, 87(8), 433–441.

Milner, F.M., Estabrooks, C.A., & Humphrey, C. (2005). Clinical nurse educators as agents for change: Increasing research utilization. International Journal of Nursing Studies, 42, 899–914.

Peterson, J.C., Rogers, E.M., Cunningham-Sabo, L., & Davis, S.M. (2007). A framework for research utilization applied to seven case studies. American Journal of Preventive Medicine, 33 (1S), S21–S34.

U.S. Department of Labor. (2009). Labor force statistics from the Current Population Survey: Employment status and disability status, December 2009. See *http://www.bls.gov/cps/cpsdisability_122009.htm.*

Van Duyn, M.A.S., McCrae, T., Wingrove, B.K., Henderson, K.M., Boyd, J.K., Kagawa-Singer, M., et al. (2007). Adapting evidence-based strategies to increase physical activity among African Americans, Hispanics, Hmong, and Native Hawaiians: A social marketing approach. Preventing Chronic Diseases, 4(4). *See http://www.cdc.gov/pcd/issues/2007/oct/pdf/07_0025.pdf.*

Proposed Priority:

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for a Disability and Rehabilitation Research Project (DRRP) to serve as the Center on Knowledge Translation (KT) for Employment Research (Center). The purpose of the Center is to conduct systematic reviews of research findings to identify evidence-based practices and other information that can be used to improve employment outcomes for individuals with disabilities, to identify research gaps, and to investigate and promote effective strategies to increase the appropriate use of these findings. The Center must conduct rigorous and relevant research, development, technical assistance, dissemination, and utilization activities.

These activities must contribute to: (1) Improved knowledge of the state of research relevant to improving employment outcomes for individuals with disabilities; (2) improved

knowledge of the findings from high-quality research; (3) identification of practices that are promising or proven to have been effective for specific purposes or target audiences; and (4) improved knowledge on the part of consumers and others not only of the research findings but of the strengths of the findings and the appropriate use of the research information. These outcomes will lead to the increased use of research-based knowledge related to improving employment outcomes for individuals with disabilities by the following user groups: Individuals with disabilities, employers, policy makers, and vocational rehabilitation (VR) practitioners. The Center must work in partnership with organizations representing these user groups. These user groups must be actively engaged in the planning, conduct, and evaluation of all project activities.

Under this priority, the Center must contribute to the following outcomes:

(a) Establishment of available employment-related knowledge that can be used to inform behavior, practices, or policies that improve employment outcomes of individuals with disabilities. The Center must contribute to this outcome by:

(1) Systematically reviewing existing research to identify findings that can be used by individuals with disabilities, employers, policy makers, and VR practitioners to improve the employment of individuals with disabilities. The Center must conduct systematic reviews of individual studies to assess their strengths and weaknesses; summarize findings; assess the appropriate uses of the findings; determine the relevance of the findings; and make the information publicly available. In so doing, the Center must take into account the types of research and stages of knowledge development (*i.e.,* the type of research questions being addressed and the methods employed) in each area.

(2) Producing syntheses on topics, including promising and proven practices, for which the Center determines the research to be of sufficient quality and relevance pursuant to paragraph (a)(1) of this proposed priority. The Center must use standards and methods that are appropriate for the type of research, the stage of knowledge in the identified areas, and its intended use to categorize, evaluate, and synthesize the research findings identified in paragraph (a)(1) of this proposed priority.

(3) Suggesting priorities for a future research agenda based on the knowledge gaps discovered through the review of existing research findings in paragraph (a)(1) of this proposed priority.

(b) Establishment of effective approaches and strategies to promote the appropriate use of research findings on improving the employment of individuals with disabilities, by individuals with disabilities, employers, policy makers, and VR practitioners.

The Center must contribute to this outcome by:

(1) Conducting research on factors impeding and contributing to the use of research findings on employment of individuals with disabilities by individuals with disabilities, employers, policy makers, and VR practitioners.

(2) Identifying, selecting, refining, and testing approaches and strategies that can be used to promote the appropriate use of research findings on employment of individuals with disabilities by individuals with disabilities, employers, policy makers, and VR practitioners. These approaches and strategies must be refined and tested within each of the user groups. The Center must use at least one of the areas of the synthesized knowledge from paragraph (a)(2) of this proposed priority as a subject for further refinement and testing of KT approaches and strategies.

(c) Increased utilization of approaches and strategies determined to be effective under paragraph (b) of this proposed priority to promote the use of research findings on employment of individuals with disabilities.

The Center must contribute to this outcome by:

(1) Providing training and technical assistance to NIDRR-funded grantees in the employment area to facilitate the implementation and evaluation of these KT approaches and strategies.

(2) Coordinating KT research and development activities with existing NIDRR-funded KT and employment projects through consultation with NIDRR project officers.

(3) Using appropriate approaches and strategies established under paragraph (b) of this proposed priority to disseminate the synthesized knowledge established under paragraph (a) of this proposed priority to individuals with disabilities, employers, policy makers, and VR practitioners.

(4) Organizing and hosting a state-of-the-science conference by the end of the fourth project year.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register.** The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final priority: We will announce the final priority in a notice in the **Federal Register.** We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Order 12866: This notice has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with this proposed regulatory action are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this proposed regulatory action, we have determined that the benefits of the proposed priority justify the costs.

Discussion of costs and benefits:

The benefits of the Disability and Rehabilitation Research Projects and Centers Programs have been well established over the years in that similar projects have been completed successfully. This proposed priority will generate new knowledge through research, development, dissemination, utilization, and technical assistance projects that will enhance the lives of individuals with disabilities by improving their employment outcomes.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.* To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 12, 2010.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2010–11716 Filed 5–14–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Notice of Reestablishment of the Secretary of Energy Advisory Board

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 102–3, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the Secretary of Energy Advisory Board (the Board) has been reestablished for a two-year period.

The Board will provide independent, balanced, and authoritative advice to the Secretary of Energy on matters concerning the Department's management, basic science, research, development and technology activities; energy and national security responsibilities; environmental cleanup activities; energy-related economic activities; and the operations of the Department.

The Board members are selected to assure well-balanced geographical representation and on the basis of their broad competence in areas relating to quality management, basic science, renewable energy, energy policy, environmental science, economics, and broad public policy interests. Membership of the Board will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act (Pub. L. 92–463) and implementing regulations.

The reestablishment of the Board has been determined to be in the public interest, important and vital to the conduct of the Department's business in connection with the performance of duties established by statute for the Department of Energy. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Amy Bodette, U.S. Department of Energy, Washington, DC 20585, *telephone:* 202–586–6210.

Issued in Washington, DC, on May 12, 2010.

Carol A. Matthews,

Committee Management Officer.

[FR Doc. 2010–11723 Filed 5–14–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13693–000]

South Dakota Energy, L.L.C.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 10, 2010.

On March 29, 2010, and revised May 5, 2010, the South Dakota Energy, L.L.C. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the South Dakota Energy Hydroelectric Project located on the Missouri River in Gregory County, South Dakota. The proposed project's existing lower reservoir is owned and operated by the U.S. Army Corps of Engineers (Corps). 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 boundary is partially located on Federal lands managed by the Corps.

The proposed project would consist of the following: (1) A new 60-foot-high, 15,700-foot long earth embankment dam, impounding a 450-acre upper reservoir, with 25,250 acre-feet of storage capacity at a normal elevation of 2,090 mean sea level; (2) a 30-foot-diameter, 700-foot-long vertical shaft concrete or steel power tunnel; (3) a 30-foot-diameter, 7,100-foot-long concrete or steel conduit; (4) an underground powerhouse containing four 300-megawatt reversible pump-turbine/generator units, discharging into Lake Francis Case through a 40-foot-diameter, 2,200-foot-long discharge tunnel; (5) the existing Lake Francis Case lower reservoir; (6) a new 20-mile-long, 345-kilovolt transmission line to interconnect with an existing transmission line at the Fort Randall generation facility; and (7) appurtenant facilities.

Applicant Contact: Brent Smith, Chief Operating Officer, South Dakota Energy, L.L.C., 975 South State Highway, Logan, UT 84321; *phone:* (435) 752–2580.

FERC Contact: Joseph C. Adamson, 202–502–8085.

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. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. 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 the Commission's Web site at *http://www.ferc.gov/docs-filing/*

elibrary.asp. Enter the docket number (P–13693–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11629 Filed 5–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13705–000]

White Pine Waterpower, LLC; Notice of Preliminary Permit Application Accepted For Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 10, 2010.

On April 6, 2010, White Pine Waterpower, 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 White Pine Pumped Storage Project located in White Pine County, Nevada, near the town of Ely. 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 pumped storage project would consist of the following: (1) A 210-foot-high upper, rockfill dam; (2) an upper artificial, lined reservoir with a surface area of about 74 acres and volume of approximately 4,938 acre-feet at normal water surface elevation; (3) a lower artificial, lined reservoir with a surface area of about 72 acres and volume of approximately 5,011 acre-feet at normal water surface elevation; (4) 10,950 feet of conduit; (5) a proposed powerhouse 63 feet wide by 253 feet long by 120 feet high to be located underground approximately 3,620 feet west of the upper reservoir intake at an elevation of approximately 6,320 feet; (6) one 150-megawatt (MW), one 100–MW, and one 50–MW reversible pump-turbines totaling 300 MW in capacity with up to 100 MW of additional pumping capacity; (7) an access tunnel approximately 3,380 feet long and 24 feet in diameter leading from the ground level to the powerhouse; (8) a proposed 2.4-mile-long, 230 kilovolt transmission line to interconnect to a substation operated by Sierra Pacific Power; and (9) appurtenant facilities.

The development would have an annual generation of 919,800 megawatt-hours.

Applicant Contact: Matthew Shapiro, CEO, Gridflex Energy, LLC, 1210 W. Franklin St., Ste. 2, Boise, ID 83702; *phone:* (904) 216–0254.

FERC Contact: Shana Murray, 202–502–8333.

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. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. 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–13705) in the docket number field to access the document. For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11630 Filed 5–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13718–000]

Quality GearBox, LLC; Notice of Competing Preliminary Permit Application Accepted for Filing and Soliciting Comments and Motions To Intervene

May 10, 2010.

1. On April 28, 2010, Quality GearBox, LLC (Quality GearBox) filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Harpersfield Low Head Dam Hydroelectric Project No. 13718, to be located at the existing Harpersfield Dam, on the Grand River, in Ashtabula County, Ohio.

2. The proposed project would consist of: (1) An existing 8.5-foot-high by 325-foot-long gravity dam; (2) an existing 19-acre impoundment with a storage capacity of 133 acre feet; (3) an existing filtration plant to be converted into a powerhouse with three new turbine-generator units for a total installed capacity of 300 kilowatts; (4) a new 300-foot-long, 13.2-kilovolt transmission line; and (5) appurtenant facilities. The proposed project would operate in a run-of-river mode and would have an estimated average annual generation of 2,000 kilowatt-hours.

Applicant Contact: Mr. Devin Linehan, Managing Member, Quality GearBox, LLC, 5834 North River Road, Geneva, OH 44041; (440)–466–3207.

FERC Contact: Michael Watts; (202) 502–6123.

Competing Application: This application competes with Project No. 13627–000 filed November 6, 2009. Competing applications were due by close of business on April 30, 2010.

Deadline for filing comments or motions to intervene: 60 days from the issuance of this notice. Comments and motions to intervene may be filed electronically via the Internet. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filings-comments.asp.* More information about this project, including a copy of the

application, can be viewed or printed on the "eLibrary" link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13718) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11634 Filed 5–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

April 20, 2010.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG10–33–000.

Applicants: Meadow Lake Wind Farm III LLC.

Description: Self-Certification of exempt wholesale generator status of Meadow Lake Wind Farm III LLC.

Filed Date: 04/20/2010.

Accession Number: 20100420–5110.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 11, 2010.

Docket Numbers: EG10–34–000.

Applicants: Meadow Lake Wind Farm IV LLC.

Description: Self-Certification of exempt wholesale generator status of Meadow Lake Wind Farm IV LLC.

Filed Date: 04/20/2010.

Accession Number: 20100420–5111.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 11, 2010.

Docket Numbers: EG10–35–000.

Applicants: Blackstone Wind Farm II LLC.

Description: Self-Certification of exempt wholesale generator status submitted for filing by Blackstone Wind Farm II LLC.

Filed Date: 04/20/2010.

Accession Number: 20100420–5115.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 11, 2010.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER04–170–011.

Applicants: MxEnergy Electric Inc.

Description: MxEnergy Electric Inc. submits revisions to its market-based rate tariff reflecting its status as a Category 2 Seller in the Southwest, Northeast and Northwest regions, effective 4/20/10.

Filed Date: 04/19/2010.

Accession Number: 20100420–0204.

Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: ER07–521–009.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc. submits its implementation plan in compliance with the April 2008 Order.

Filed Date: 04/16/2010.

Accession Number: 20100419–0212.

Comment Date: 5 p.m. Eastern Time on Friday, May 07, 2010.

Docket Numbers: ER09–1273–001.

Applicants: Westar Energy, Inc., Kansas Gas and Electric Company

Description: Westar Energy, Inc. *et al.* submits Sub. Original Sheet 132B through 132D *et al.* to Westar's Open Access Transmission Tariff.

Filed Date: 04/19/2010.

Accession Number: 20100419–0211.

Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: ER10–1063–000.

Applicants: Vermont Transco LLC.

Description: Vermont Transco, LLC submits Substation Participation Agreement, currently designated as Rate Schedule 7 etc. to be effective 5/1/10.

Filed Date: 04/16/2010.

Accession Number: 20100419–0205.

Comment Date: 5 p.m. Eastern Time on Friday, May 07, 2010.

Docket Numbers: ER10–1064–000.

Applicants: 511 Plaza Energy, LLC.

Description: 511 Plaza Energy, LLC submits an application for authorization to make wholesale sales of energy and capacity at negotiated, market-based rates.

Filed Date: 04/19/2010.

Accession Number: 20100419–0208.

Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: ER10–1065–000.

Applicants: Southern Company Services, Inc.

Description: Southern Companies submits the Interconnection Agreement by and between Piedmont Green Power, LLC and Southern Companies.

Filed Date: 04/19/2010.

Accession Number: 20100419–0210.

Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: ER10–1066–000.

Applicants: Alliant Energy Corporate Services, Inc., Wisconsin Power and Light Company.

Description: Wisconsin Power and Light Company submits Notice of Cancellation of WPL's Rate Schedule FERC Electric Tariff, Volume 5 etc.

Filed Date: 04/19/2010.

Accession Number: 20100419–0209.

Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: ER10–1067–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits an executed Interconnection Agreement with Mid-Kansas Electric Company, LLC *et al.*

Filed Date: 04/19/2010.

Accession Number: 20100420–0206.

Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: ER10–1068–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits an executed Service Agreement for Network Integration Transmission Service with Westar Energy etc.

Filed Date: 04/19/2010.

Accession Number: 20100420–0205.

Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: ER10–1069–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits revisions to its Open Access Transmission Tariff and requests an effective date of 6/19/10.

Filed Date: 04/19/2010.

Accession Number: 20100420–0203.

Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–96–004.

Applicants: Southern Company Services, Inc.

Description: Annual Penalty Assessment and Distribution Report of Southern Company Services, Inc.

Filed Date: 04/19/2010.

Accession Number: 20100419–5268.

Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Docket Numbers: OA10–9–000.

Applicants: New York Independent System Operator, Inc.

Description: Annual Compliance Report of the New York Independent System Operator, Inc. Regarding Unreserved Use and Late Study Penalties.

Filed Date: 04/19/2010.

Accession Number: 20100419–5270.

Comment Date: 5 p.m. Eastern Time on Monday, May 10, 2010.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RD10–10–000.

Applicants: Transmission Relay Loadability Reliability.

Description: Compliance Filing of NERC in Response to Paragraphs 297, 308, 310, 311, and 312 of Order No. 733 Revised Violation Risk Factors and Violation Severity Levels for PRC–023–1 Transmission Relay Loadability.

Filed Date: 04/19/2010.

Accession Number: 20100419–5214.

Comment Date: 5 p.m. Eastern Time on Wednesday, May 19, 2010.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11623 Filed 5–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Electrical Interconnection of the Juniper Canyon I Wind Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Availability of Record of Decision (ROD).

SUMMARY: The Bonneville Power Administration (BPA) has decided to offer Iberdrola Renewables, LLC, a Large Generator Interconnection Agreement for interconnection of up to 150 megawatts of power into the Federal Columbia River Transmission System. The power would be generated from their proposed Juniper Canyon I Wind Energy Project (Wind Project) in Klickitat County, Washington. To interconnect the Wind Project, BPA will expand an existing substation (Rock Creek Substation) by approximately .25 acres. This decision to interconnect the Wind Project is consistent with and tiered to BPA's Business Plan Environmental Impact Statement (DOE/EIS–0183, June 1995), and the Business Plan Record of Decision (BP ROD, August 1995).

ADDRESSES: Copies of this tiered ROD and the Business Plan EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The RODs and EIS are also available on our Web site, *http://www.efw.bpa.gov*.

FOR FURTHER INFORMATION CONTACT: Makary Hutson, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone number 1–800–622–4519; fax number 503–230–5699; or e-mail *mahutson@bpa.gov.*

Issued in Portland, Oregon, on May 10, 2010.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 2010–11672 Filed 5–14–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 271–128]

Entergy Arkansas, Inc.; Notice of Availability of Environmental Assessment

May 10, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application to delegate authority to Entergy Arkansas, Inc (licensee) for approving excavation and dredging activities at the Carpenter-Remmel Hydroelectric Project (FERC No. 271). An environmental assessment (EA) has been prepared as part of staff's review of the proposal. The project is located on the Ouachita River, in Hot Springs and Garland Counties, Arkansas.

In the application, the licensee proposes a procedure that establishes guidance for removing rock, soil, and silt materials from Lakes Catherine and Hamilton, the project's two reservoirs, without prior Commission approval. The EA contains Commission staff's analysis of the probable environmental impacts of the proposed procedure and concludes that approval of the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

The EA is attached to a Commission order titled "Order Modifying and Approving Dredging and Excavation Permitting Procedure," which was issued May 4, 2010, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "elibrary" link. Enter the docket number (P–271) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11632 Filed 5–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2503–136]

Duke Energy Carolinas, LLC; Notice of Availability of Environmental Assessment

May 10, 2010.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed an application submitted by Duke Energy Carolinas, LLC (licensee) for non-project use of project lands and waters at the Keowee-Toxaway Project (FERC No. 2503). An environmental assessment (EA) has been prepared as part of staff's review of the proposal. The proposed use would be located on Lake Keowee in Oconee County, South Carolina.

In the application, the licensee proposes to issue a lease to Sleppy, LLC, to build a residential marina for the Wilderness Cove subdivision. The proposed marina would consist of 2 floating, cluster docks accommodating a total of 30 watercraft, one concrete boat ramp, and 189 linear feet of rip-rap inter-planted with native vegetation. The boat ramp would serve a private, dry-dock boat-storage facility intended for the residents of Wilderness Cove subdivision, which would be located outside of the project boundary. The EA contains Commission staff's analysis of the probable environmental impacts of the proposed action and concludes that approval of the proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA is attached to a Commission order titled "Order Modifying and Approving Non-Project Use of Project Lands and Waters," which was issued May 10, 2010, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "elibrary" link. Enter the docket number (P–2503) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3372, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11631 Filed 5–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER07–125–001]

Keystone Energy Partners, LP; Notice of Filing

May 10, 2010.

Take notice that on December 16, 2009, Keystone Energy Partners, LP submit for filing an Updated Market Power Analysis, Request for Category 1 Status, and updated FERC Electric Tariff, Original Volume No 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 1, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11633 Filed 5–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–1090–000]

Commercial Energy of Montana, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 10, 2010.

This is a supplemental notice in the above-referenced proceeding of Commercial Energy of Montana, Inc.'s application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 31, 2010.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11628 Filed 5–14–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM10–13–000]

Credit Reforms in Organized Wholesale Electric Markets; Further Notice Concerning Technical Conference

May 10, 2010.

Take notice that on May 11, 2010, the Federal Energy Regulatory Commission staff will convene a technical conference related to the Commission's Notice of Proposed Rulemaking on Credit Reforms in Organized Wholesale Electric Markets,[1] as previously announced.[2]

The discussions at the conference, which is open to the public, may address matters at issue in the following Commission proceedings:

Docket No. ER10–942–000, ISO New England Inc., and New England Power Pool.

Docket No. ER10–1190–000, ISO New England Inc., and New England Power Pool.

Docket No. ER10–1196–000, PJM Interconnection, L.L.C., and PJM Settlement, Inc.

For more information, please contact Sarah McKinley, 202–502–8368, *sarah.mckinley@ferc.gov;* for logistical issues, and Scott Miller, 202–502–8456, *scott.miller@ferc.gov;* or Christina Hayes 202–502–6194, *christina.hayes@ferc.gov;* for other concerns.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–11627 Filed 5–14–10; 8:45 am]

BILLING CODE 6717–01–P

[1] This workshop is being held in accordance with the Commission's order *Obtaining Guidance on Regulatory Requirements,* 123 FERC ¶ 61,157 (2008).

[2] *Notice of Technical Conference,* 75 FR 20991, as supplemented by *Notice of Agenda for Technical Conference,* issued May 5, 2010.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9152–1]

Announcement of the Board of Trustees for the National Environmental Education Foundation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; correction.

SUMMARY: The Environmental Protection Agency published a document in the **Federal Register** of April 19, 2010, concerning announcement of the Board of Trustees for the National Environmental Education Foundation. The document contained misspelled names.

FOR FURTHER INFORMATION CONTACT: Andrew Burnett, 202–564–0446.

Correction

In the **Federal Register** of April 19, 2010, in the FR Doc. 2010–8927, on page 20350, in the third column, correct the name and law firm of the appointee to read:

The appointee is Manuel Alberto Diaz, a partner in the law firm Lydecker Diaz, L.L.P.

Dated: May 11, 2010.

Lisa P. Jackson,

Administrator.

[FR Doc. 2010–11675 Filed 5–14–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2010–0164; FRL–9152–2]

Guidance for Federal Land Management in the Chesapeake Bay Watershed

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a final Guidance for Federal Land Management in the Chesapeake Bay Watershed which EPA is publishing pursuant to Section 502 of Executive Order (EO) 13508 ("Chesapeake Bay Protection and Restoration", published on May 12, 2009). This guidance will allow the federal government to lead the way in protecting the Bay and its watershed with the most effective tools and practices available to reduce water pollution from a variety of nonpoint sources, including agricultural lands, urban and suburban areas, forestry, riparian areas, septic systems, and hydromodification. This guidance is the first product under the Chesapeake Bay Executive Order to provide technical tools that will be needed to restore the Bay. Section 501 of the Executive Order directs federal agencies with ten or more acres within the Chesapeake Bay watershed to implement the Section 502 guidance as expeditiously as practicable and to the extent permitted by law.

FOR FURTHER INFORMATION CONTACT: Katie Flahive, USEPA, Office of Water, Office of Wetlands, Oceans and Watersheds, 1200 Pennsylvania Ave., NW., MC 4503T, Washington, DC; *telephone number:* (202) 566–1206; *fax number:* (202) 566–1437; *e-mail: Flahive.Katie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

Executive Order 13508, Chesapeake Bay Protection and Restoration, dated May 12, 2009 (74 FR 23099, May 15, 2009), directed EPA to prepare and publish a guidance for federal land management in the Chesapeake Bay watershed within one year. A draft of this guidance was released for public comment on March 24, 2010 (75 FR 91294, March 24). This final guidance incorporates revisions resulting from public comments, consideration by the federal agencies, and peer review comments.

Why was this guidance prepared?

The purpose of this guidance is to describe "proven cost-effective tools and practices that reduce water pollution" that are appropriate to restore and protect the Chesapeake Bay. Assuming that all necessary point source reductions are achieved and other needed restoration actions are taken, these tools and practices, when implemented broadly, aim to enable the Chesapeake Bay to be restored. While the primary audience for this document is Federal land managers, nonfederal land managers, including states, local governments, conservation districts, watershed organizations, developers, farmers and citizens may also find this guidance to be helpful.

In significant part, this guidance is being developed to offer solutions for implementation to meet specific Chesapeake Bay goals. EPA, in

conjunction with other agencies, is currently developing Bay-wide pollutant reduction goals that will ultimately be used to establish total maximum daily loads (TMDL) under Section 303(d) of the Clean Water Act for the Chesapeake Bay watershed. The TMDL will be followed by the development of watershed implementation plans in 92 Bay sub-watersheds that will have had load and wasteload allocations assigned based on the TMDL and the Chesapeake Bay model. While the Section 502 guidance is required to be published before the TMDL is finalized, we expect that the TMDL and sub-watershed allocations will clarify that the nonpoint sources in the Chesapeake Bay watershed will need to be controlled, and be controlled well, in order to restore the Bay. This guidance should help land managers identify and select practices that should provide the needed level of control.

This guidance has chapters addressing the following categories of activity (excluding sources regulated as point sources): Agriculture; Urban and Suburban areas, including Turf; Decentralized Wastewater Treatment Systems; Forestry; Riparian Areas; and Hydromodification. Each chapter contains implementation measures that provide the framework for the chapter. These are intended to convey the essential actions that will need to be implemented in order to assure that the broad goals of the Chesapeake Bay Executive Order can be achieved. Each chapter also includes information on practices that can be used to achieve the goals; information on the effectiveness and costs of the practices; where relevant, cost savings or other economic/societal benefits (in addition to the pollutant reduction benefits) that derive from the implementation goals and/or practices; and copious references to other documents that provide additional information.

EPA emphasizes that this is not a regulatory document. At the same time it is important to realize that Section 501 of the Executive Order directs federal agencies with ten or more acres within the Chesapeake Bay watershed to implement the Section 502 guidance as expeditiously as practicable and to the extent permitted by law. While this guidance may at times refer to existing statutory and regulatory provisions that contain legally binding requirements, this document does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally binding requirements on EPA, states, or the public and might not apply to a particular situation according to the circumstances. EPA and state decision makers retain the discretion to adopt approaches to control nonpoint source pollution that differ from this guidance where appropriate, and EPA may change this guidance in the future.

How can I get copies of this document and other related information?

EPA Web site: EPA published the guidance on May 12, 2010, on our Web site at *http://www.epa.gov/nps/chesbay502.* On this Web site, the guidance can be downloaded in full or by chapter. Also available on this Web site are a summary of the suite of implementation measures described and a response to public and peer review comments.

Docket: EPA has established a docket for this action under Docket ID No. EPA–HQ–OW–2009–0761. The final EO 13508 Section 502 guidance document is available in the docket at *http://www.regulations.gov.* Assistance and tips for accessing the docket can be found at *http://executiveorder.chesapeakebay.net.* For additional information about the public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* Publicly available docket materials are available electronically either through *http://www.regulations.gov* or in hard copy at the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The telephone number for this docket is 202–566–2426. The EPA Docket Center 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. Certain material, such as copyrighted materials, will be publicly available only in hard copy at the Docket Center.

Dated: May 11, 2010.

Peter S. Silva,

Assistant Administrator.

[FR Doc. 2010–11693 Filed 5–14–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9152–3]

Science Advisory Board Staff Office; Notification of a Public Teleconference of the Chartered Science Advisory Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference of the chartered SAB on June 16, 2010 to conduct quality reviews of two draft SAB reports. In addition, the SAB will discuss its draft report on EPA's strategic research directions.

DATES: The public teleconference will be held on June 16, 2010 from 11 a.m. to 2 p.m. (Eastern Daylight Time).

ADDRESSES: The public teleconference will be conducted by telephone only.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing to obtain general information concerning this public teleconference should contact Dr. Angela Nugent, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9981; fax (202) 233–0643; or e-mail at *nugent.angela@ epa.gov.* General information concerning the EPA Science Advisory Board can be found on the SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA), 5 U.S.C., App. 2, notice is hereby given that the EPA Science Advisory Board will hold a public teleconference to review three draft SAB reports: (1) The SAB Environmental Engineering Committee Hydraulic Fracturing Research Plan Review; (2) the report from the SAB Work Group to Lead the Review of the Arsenic Cancer Assessment; and (3) the chartered SAB's draft report on Strategic Research Directions and Integrated Transdisciplinary Research. The SAB was established pursuant to 42 U.S.C. 4365 to provide independent scientific and technical advice to the Administrator on the technical basis for Agency positions and regulations. The SAB is a Federal Advisory Committee under FACA. The SAB will comply with the provisions of FACA and all appropriate SAB Staff Office procedural policies.

Background: (1) Advisory on EPA's Proposed Hydraulic Fracturing Research Plan Review. In its Fiscal Year 2010 Appropriation Conference Committee Directive to EPA, the U.S. House of Representatives approved a provision that urges EPA to assess the potential risks to drinking water posed by hydraulic fracturing of formations including coalbeds and shale for extraction of natural gas. Hydraulic fracturing generates vertical and horizontal fractures in underground geologic formations to facilitate extraction of gas (or oil) from the subsurface.

To meet the Congressional request, EPA's Office of Research and Development (ORD) developed a draft research plan. This plan described an approach to gather existing data and information including a stakeholder input process; to catalog potential risks to drinking water supplies from hydraulic fracturing; to identify data gaps; and to develop research questions, research needs, and research products. ORD requested SAB advice regarding the planned research. The SAB Environmental Engineering Committee discussed its advice on April 7–8, 2010 (75 FR 9205–9206). Background information about this advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Hydraulic%20Fracturing?OpenDocument.*

(2) *Review of the Arsenic Cancer Assessment:* EPA is currently in the process of updating the 1988 IRIS cancer assessment for inorganic arsenic. The EPA evaluated and implemented the National Research Council recommendations in their report titled *Arsenic in Drinking Water:* 2001 Update and in 2005 requested the SAB review the Agency's draft cancer assessment for inorganic arsenic. The SAB review report (*Advisory on EPA's Assessments of Carcinogenic Effects of Organic and Inorganic Arsenic: A Report of the US EPA Science Advisory Board,* EPA–SAB–07–008) was finalized in 2007.

EPA's Office of Research Development has recently completed a 2010 draft titled: "Toxicological Review of Inorganic Arsenic: In Support of the Summary Information on the Integrated Risk Information System (IRIS)". ORD requested that the SAB evaluate and comment on EPA's interpretation and implementation of the key SAB (2007) recommendations. ORD requested a review focusing in three areas of the draft cancer assessment of inorganic arsenic: Evaluation of epidemiological literature; dose-response modeling approaches; and the sensitivity analysis of the exposure assumptions used in the risk assessment.

A work group of the chartered SAB discussed its review on April 6–7, 2010 (75 FR 9205–9206). Background information about this advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Rev%20Tox%20Review%20Inorg%20Arsenic?OpenDocument.*

(3) *Chartered SAB's draft report on strategic research directions and integrated transdisciplinary research:* Since 2007 EPA's ORD has requested SAB advice on strategic research directions. ORD requested advice on the overall strategic direction of the program in relation to EPA's overall mission and components of EPA's research program. The draft report was developed after SAB discussions with ORD about strategic research directions on November 9–10, 2009 (74 FR 52805–52806) and April 5–6, 2010 (75 FR 11883–11884).

Background information about this advisory activity can be found on the SAB Web site at *http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/Research%20Directions?OpenDocument.*

Availability of Meeting Materials: The agenda and other materials in support of the teleconference will be placed on the SAB Web site at *http://www.epa.gov/sab* in advance of the teleconference.

Procedures for Providing Public Input: Public comment for consideration by EPA's Federal advisory committees and panels has a different purpose from public comment provided to EPA program offices. Therefore, the process for submitting comments to a Federal advisory committee is different from the process used to submit comments to an EPA program office.

Federal advisory committees and panels, including scientific advisory committees, provide independent advice to EPA. Members of the public can submit comments for a Federal advisory committee to consider as it develops advice for EPA. They should send their comments directly to the Designated Federal Officer for the relevant advisory committee. *Oral Statements:* In general, individuals or groups requesting time to make an oral presentation at a public SAB teleconference will be limited to three minutes, with no more than one-half hour for all speakers. Those interested in being placed on the public speakers list should contact Dr. Nugent at the contact information provided above by June 9, 2010. *Written Statements:* Written statements should be received in the SAB Staff Office by June 9, 2010. Written statements should be supplied to the DFO via e-mail to *nugent.angela@epa.gov* (acceptable file format: Adobe Acrobat PDF, WordPerfect, MS Word, MS PowerPoint, or Rich Text files in IBM–PC/Windows 98/2000/XP format). Submitters are asked to provide versions of each document submitted with and without signatures, because the SAB Staff Office does not publish documents with signatures on its Web sites.

Accessibility: For information on access or services for individuals with disabilities, please contact Dr. Angela Nugent at (202) 343–9981 or *nugent.angela@epa.gov.* To request accommodation of a disability, please contact her preferably at least 10 days prior to the teleconference, to give EPA as much time as possible to process your request.

Dated: May 10, 2010.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–11691 Filed 5–14–10; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9152–4]

Science Advisory Board Staff Office; Request for Nominations of Experts for the SAB Arsenic Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice request for nominations.

SUMMARY: The Science Advisory Board (SAB) Staff Office is requesting public nominations of experts to form an SAB panel to review EPA's Integrated Risk Information System (IRIS) assessment for inorganic arsenic (noncancer).

DATES: Nominations should be submitted by June 7, 2010 per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Dr. Sue Shallal, Designated Federal Officer (DFO), EPA Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; via telephone/voice mail (202) 343–9977; by fax at (202) 233–0643; or via e-mail at *shallal.suhair@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: EPA is revising an assessment for arsenic in support of EPA's Integrated Risk Information System (IRIS). The National Research Council (NRC) published reports on the health effects of arsenic in 1999 and 2001. Since 2001, information has been developed for dermal hyperpigmentation, keratosis, and epidemiology of inorganic arsenic that may impact EPA's 1988 values. The IRIS Program is preparing an assessment which will incorporate available noncancer health effects information for inorganic arsenic, as well as new risk assessment methods. ORD has requested that the SAB conduct the external peer review of its revised draft assessment.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. The SAB Staff Office will form an expert panel to review ORD's draft IRIS Toxicological Review of Inorganic Arsenic (noncancer). The Arsenic Review Panel is being asked to comment on the scientific soundness of the Agency's draft assessment. The SAB panel will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies. Upon completion, the panel's report will be submitted to the chartered SAB for final approval for transmittal to the EPA Administrator.

Availability of the Review Materials: The EPA draft IRIS Toxicological Review of Inorganic Arsenic (noncancer) will be made available by ORD at the following URL *http://epa.gov/ncea* (under "Recent Additions"). Availability of the draft Toxicological Review will be announced in a separate **Federal Register** Notice. For questions concerning the review materials, please contact Dr. Janice S. Lee, at (919) 541–9458, or *lee.janices@epa.gov*.

Request for Nominations: The SAB Staff Office is requesting nominations of nationally recognized experts with expertise and research experience with inorganic arsenic in one or more of the following areas: Epidemiology; clinical medicine; dermatology; toxicology and mechanisms of action; toxicokinetics; and risk assessment and biostatistics.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals for possible service on the Arsenic Review Panel in the areas of expertise described above. Nominations should be submitted in electronic format (which is preferred over hard copy) following the instructions for "Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed" provided on the SAB Web site. The instructions can be accessed through the "Nomination of Experts" link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab*. To receive full consideration, nominations should include all of the information requested.

EPA's SAB Staff Office requests: Contact information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; sources of recent grants and/or contracts; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Dr. Shallal, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than June 7, 2010. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to the **Federal Register** notice and additional experts identified by the SAB Staff will be posted on the SAB Web site at *http://www.epa.gov/sab.* Public comments on this List of Candidates will be accepted for 21 calendar days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced subcommittee or review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, may be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In establishing the Inorganic Arsenic (noncancer) Review Panel, the SAB Staff Office will consider public comments on the list of candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for panel membership include: (a) Scientific and/or technical expertise, knowledge and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; (e) skills working in advisory committees and panels for the Panel as a whole, and (f) diversity of and balance among scientific expertise and viewpoints.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address *http://www.epa.gov/sab/pdf/epaform3110–48.pdf*.

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf*.

Dated: May 10, 2010.

Anthony Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. 2010–11695 Filed 5–14–10; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2010–0009]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: Application for Issuing Bank Credit Limit (IBCL) Under Bank Letter of Credit Policy.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Application for Issuing Bank Credit Limit (IBCL) Under Bank Letter of Credit Policy will be used by entities involved in the export of US goods and services.

We have made the following changes to this application:

a. Added the following questions:

1. How many new FTEs in the U.S. do you export to hire this year to help obtain and fulfill your export sales covered by this letter of credit?

2. How many existing FTEs in the U.S. do you currently have on staff to obtain and fulfill your export sales covered by this letter of credit?

These two questions have been added in order to better assess the impact export financing has on U.S. employment. It is generally understood that assisting U.S. exports results in improved U.S. employment; the information from these questions will be used to quantify the expected benefit from Ex-Im Bank's support.

Our customers will be able to submit this form on paper or electronically. The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its long term guarantee and direct loan programs.

DATES: Comments should be received on or before July 16, 2010 to be assured of consideration.

ADDRESSES: Comments maybe submitted electronically on *http://www.regulations.gov* or by mail to Michele Kuester, Export Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–36 Application for Issuing Bank Credit Limit (IBCL) under Bank Letter of Credit Policy.

OMB Number: 3048–0016.

Type of Review: Regular.

Need and Use: The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its long term guarantee and direct loan programs.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–11667 Filed 5–14–10; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2010–0008]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: Short Term Multi-Buyer Export Credit Insurance Policy Application.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Short Term Multi-Buyer Export Credit Insurance Policy Application will be used by entities involved in the export of US goods and services.

We have made the following changes to this application:

a. Change question three (3) to read "Do you have an SBA or Ex-Im Bank Working Capital Loan or are you applying for one?"

b. Added the following questions:

1. How many new FTEs in the U.S. do you expect to hire this year to help obtain and fulfill your export sales?

2. How many existing FTEs in the U.S. do you currently have on staff to obtain and fulfill your expect sales?

These two questions have been added in order to better assess the impact export financing has on U.S. employment. It is generally understood that assisting U.S. exports results in improved U.S. employment; the information from these questions will be used to quantify the expected benefit from Ex-Im Bank's support.

Our customers will be able to submit this form on paper or electronically. The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its long term guarantee and direct loan programs.

DATES: Comments should be received on or before July 16, 2010 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *http://www.regulations.gov* or by mail to Michele Kuester, Export-Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–50 Short Term Multi-Buyer Export Credit Insurance Policy Application.

OMB Number: 3048–0023.

Type of Review: Regular.

Need and Use: The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its long term guarantee and direct loan programs.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–11671 Filed 5–14–10; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2010–0011]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: Report of Premiums Payable for Financial Institutions Only (EIB 92–30).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

We have made the following changes to this application:

a. Under "Obligo Types" we have added "Financial Institution" as an option;

b. Under "Obligo Types" we have deleted "Eximbank Sole Risk" as an option;

c. Under "Terms" we have added "CAD or SDDP";

d. Under "Terms" we have deleted "Sight Payments (non-letter of credit)";

e. Under "Terms" we have changed "1–60 Days" to "1–30 Days" as an option;

f. Under "Terms" we have added "31–60 Days" as an option;

g. Under "Terms" we have changed "61–120 Days" to "61–90 Days" as an option; and

h. Under "Terms" we have added "91–120 Days" as an option.

Our customers will be able to submit this form on paper or electronically. The information collected enables the applicant to provide Ex-Im Bank with the information necessary to record custom utilization and management prospective insurance liability relative to risk premiums received.

DATES: Comments should be received on or before June 16, 2010 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *http://www.regulations.gov* or by mail to Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20038 *attn:* OMB 3048–0021.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–30. Report of Premiums Payable for Financial Institutions Only.

OMB Number: 3048–0021.

Type of Review: Regular.

Need and Use: The information collected enables the applicant to provide Ex-Im Bank with the information necessary to record custom utilization and management prospective insurance liability relative to risk premiums received.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 150.

Estimated Time per Respondent: 15 minutes.

Government Annual Burden Hours: 450.

Frequency of Reporting or Use: Monthly.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–11670 Filed 5–14–10; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2010–0012]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: Application for Long Term Loan or Guarantee (EIB 95–10).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

We have made the following changes to this application:

a. Added fields for application, exporter, and supplier to indicate if they are Minority Owned or Woman Owned businesses;

b. Added fields for the application to indicate if the export items are considered to be environmentally beneficial and/or if the project will be used to provide renewable energy;

c. Added fields for the exporter and supplier to indicate how many FTEs were supported or created for this deal; and

d. Changed the amount of financeable local costs from 15% to 30%.

Our customers will be able to submit this form on paper or electronically. The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its long term guarantee and direct loan programs.

DATES: Comments should be received on or before (30 days after publication) to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *http://www.regulations.gov* or by mail to Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20038 attn: OMB–3048–0013.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 95–10 Application for Long Term Loan or Guarantee.

OMB Number: 3048–0013.

Type of Review: Regular.

Need and Use: The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its long term guarantee and direct loan programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 84.

Estimated Time per Respondent: 1.5 hours.

Government Annual Burden Hours: 2,016.

Frequency of Reporting or Use: On Occasion.

Total Cost to the Government: $145,152.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–11669 Filed 5–14–10; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2010–0010]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: Application for Letter of Credit Insurance Policy.

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The Application for Letter of Credit Insurance Policy will be used by entities involved in the export of US goods and services.

Our customers will be able to submit this form on paper or electronically. The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its long term guarantee and direct loan programs.

DATES: Comments should be received on or before July 16, 2010 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *http://www.regulations.gov* or by mail to Michele Kuester, Export Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 92–34 Application for Letter of Credit Insurance Policy.

OMB Number: 3048–0009.

Type of Review: Regular.

Need and Use: The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its long term guarantee and direct loan programs.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2010–11668 Filed 5–14–10; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL COMMUNICATIONS COMMISSION

Federal Advisory Committee Act

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463), the purpose of this notice is to announce that the Federal Communications Commission (FCC) has renewed the charter for the Advisory Committee for the 2012 Radiocommunication Conference (WRC–12 Advisory Committee), for a two-year period. The WRC–12 Advisory Committee is a Federal advisory committee under the Federal Advisory Committee Act.

DATES: Renewed through May 14, 2012.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, Designated Federal Official, WRC–12 Advisory Committee, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501. *E-mail: Alexander.Roytblat@fcc.gov.*

SUPPLEMENTARY INFORMATION: The GSA has renewed the charter of the WRC–12 Advisory Committee through May 14, 2012. The WRC–12 Advisory Committee will continue to provide to the FCC advice, technical support, and recommended proposals relating to the preparation of United States proposals and positions for the 2012 World Radiocommunication Conference (WRC–12); and, its scope of activities is to address issues contained in the agenda for WRC–12. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the renewal of the WRC–12 Advisory Committee.

Federal Communications Commission.

Mindel De La Torre,

Chief, International Bureau.

[FR Doc. 2010–11707 Filed 5–14–10; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation Has Been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as "of record" notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: May 10, 2010.

Federal Deposit Insurance Corporation.

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

[In alphabetical order]

FDIC Ref. No.	Bank name	City	State	Date closed
10232	1st Pacific Bank of California	San Diego	CA	5/07/2010
10233	Access Bank	Champlin	MN	5/07/2010
10234	The Bank of Bonifay	Bonifay	FL	5/07/2010
10235	Towne Bank of Arizona	Mesa	AZ	5/07/2010

[FR Doc. 2010–11678 Filed 5–14–10; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

AGENCY: Federal Trade Commission ("FTC" or "Commission").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC is seeking public comments on its proposal to extend through May 31, 2013, the current PRA clearance for information collection requirements contained its Antitrust Improvements Act Rules ("HSR Rules") and corresponding Notification and Report Form for Certain Mergers and Acquisitions ("Notification and Report Form"). That clearance expires on May 31, 2010.

DATES: Comments must be filed by June 16, 2010.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Comments in electronic form should be submitted by using the following weblink: (*https://public.commentworks.com/ftc/hsrpra2*) and following the instructions on the web-based form). Comments filed in paper form should refer to "HSR Rules: FTC File No. P989316," both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, N.W., Washington, DC 20580, in the manner detailed in the **SUPPLEMENTARY INFORMATION** section below.

All comments should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395-5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information requirements should be addressed to Sheila Clark-Coleman, Compliance Specialist, 600 Pennsylvania Ave., N.W., Room 301, Washington, D.C. 20580. Telephone: (202) 326-3100.

SUPPLEMENTARY INFORMATION:

Request for Comments:

Interested parties are invited to submit written comments. Comments should refer to "HSR Rules: FTC File No. P989316" to facilitate the organization of comments. Please note that your comment – including your name and your state – will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as any individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any

sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include "[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential" as provided in Section 6(f) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing matter for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted using the following weblink (*https://public.commentworks.com/ftc/hsrpra2*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://public.commentworks.com/ftc/hsrpra2*). If this Notice appears at (*www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it.

A comment filed in paper form should include the "HSR Rules: FTC File No. P989316" reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). On February 26 2010, the FTC sought comment on the information collection requirements associated with the HSR Rules, 16 CFR Parts 801 - 803 (Control Number: 3084-0005). 75 FR 8991. No comments were received. Pursuant to the OMB regulations, 5 CFR Part 1320, that implement the PRA, the FTC is providing this second opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the HSR Rules and the corresponding Notification and Report Form, 16 CFR. Parts 801-803.

Background Information:

Section 7A of the Clayton Act ("Act"), 15 U.S.C. 18a, as amended by the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 90 Stat. 1390, requires all persons contemplating certain mergers or acquisitions to file notification with the Commission and the Assistant Attorney General and to wait a designated period of time before consummating such transactions. Congress empowered the Commission, with the concurrence of the Assistant Attorney General, to require "that the notification . . . be in such form and contain such documentary material and information . . . as is necessary and appropriate" to enable the agencies "to determine whether such acquisitions may, if consummated, violate the antitrust laws." 15 U.S.C. 18a(d). Congress similarly granted rulemaking authority to, *inter alia*, "prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section." *Id.*

Pursuant to that section, the Commission, with the concurrence of the Assistant Attorney General, developed the HSR Rules and the corresponding Notification and Report Form. The following discussion presents the FTC's PRA burden analysis regarding completion of the Notification and Report Form.

Burden statement:

Estimated total annual hours burden: 33,298 hours

The following burden estimates are primarily based on FTC data concerning the number of HSR filings and staff's informal consultations with leading HSR counsel.

In the FTC's 2007 PRA submission to OMB regarding the HSR Rules and the Notification and Report Form, FTC staff estimated that there were 32 "index filings" under Clayton Act Sections 7A(c)(6) and 7A(c)(8) [2] that required 2 hours per filing, and 3,966 non-index filings that required, on average, approximately 39 hours per filing.[3] Moreover, staff estimated that approximately 91 non-index transactions would require an additional 40 hours of burden due to the need for a more precise valuation of transactions that are near a filing fee threshold.[4]

In fiscal year 2009 there were 1,411 non-index filings and 24 index filings. Based on an average decrease of 40.4% in fiscal year 2007 - fiscal year 2009 in the number of non-index filings, staff projects a total of 841 non-index filings for fiscal year 2010. Likewise, based on an average decrease of 18.4% in index filings over the same time period, staff projects a total of 20 index filings for fiscal year 2010. Retaining the FTC's prior assumptions, staff estimates that non-index filings require approximately 39 burden hours per filing and index filings require an average of 2 hours per filing. Moreover, staff estimates that for fiscal year 2010 approximately 22 non-index transactions will require an additional 40 hours of burden due to the need for more precise valuation of transactions that are near a filing fee threshold.[5] Thus, the total estimated

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] Clayton Act Sections 7A(c)(6) and (c)(8) exempt from the requirements of the premerger notification program certain transactions that are subject to the approval of other agencies (the so-called "index filings"), but only if copies of the information submitted to these other agencies are also submitted to the FTC and the Assistant Attorney General. Thus, parties must submit copies of these filings, which are included in the totals shown, but completing the task requires significantly less time than non-exempt transactions.

[3] These are long-standing estimates that have been repeatedly vetted through the PRA comment process. *See, e.g.*, 59 FR 30588 (June 14, 1994); 69 FR 7225, 7226 (Feb. 13, 2004); 72 FR 18251, 18252 (Apr. 11, 2007).

[4] *See* 72 FR 18252.

[5] This number is based on the volume of fiscal year 2009 non-index transactions, 716, reduced by

Continued

hours burden before adjustments is 33,719 hours [(841 non-index filings x 39 hours) + (20 index filings x 2 hours) + (22 acquiring person non-index filings requiring more precise valuation[6] x 40 hours)].

As in the past, however, staff further estimates that half of those submitting non-index filings will incorporate Item 4(a) and Item 4(b) documents by reference to an Internet link, and that doing so will reduce individual burden by one hour. Accordingly, the cumulative reduction to the above total would be 421 hours (841 non-index filings x $\frac{1}{2} \approx 421$, multiplied by 1 hour), resulting in net estimated burden for fiscal year 2010 of 33,298 hours.

This estimate is conservative. In estimating PRA burden, staff considered "the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency." 5 CFR 1320.3(b)(1). This includes "developing, acquiring, installing, and utilizing technology and systems for the purpose of disclosing and providing information." 5 CFR 1320.3(b)(1)(iv). Although not expressly stated in the OMB definitions regulation implementing the PRA, the definition of burden arguably includes upgrading and maintaining computer and other systems used to comply with a rule's requirements. Conversely, to the extent that these systems are customarily used in the ordinary course of business independent of the Rule, their associated upkeep would fall outside the realm of PRA "burden." *See* 5 CFR 1320.3(b)(2).

Industry has been subject to the basic provisions of the HSR Rules since 1978. Thus, businesses have had several years (and some have had decades) to integrate compliance systems into their business procedures. Accordingly, most companies now maintain records and provide updated order information of the kind required by the HSR Rules in their ordinary course of business. Nevertheless, staff conservatively assumes that the time devoted to compliance with the Rule by existing and new companies remains unchanged from its preceding estimate.

Estimated labor costs: $15,317,080

Using the burden hours estimated above and applying an estimated average of $460/hour for executive and attorney wages,[7] staff estimates that the total labor cost associated with the HSR Rules and the Notification and Report Form is approximately $15,317,080 (33,298 hours x $460/hour).

Estimated annual non-labor cost burden: $0 or minimal

The applicable requirements impose minimal start-up costs, as businesses subject to the HSR Rules generally have or obtain necessary equipment for other business purposes. Staff believes that the above requirements necessitate ongoing, regular training so that covered entities stay current and have a clear understanding of federal mandates, but that this would be a small portion of and subsumed within the ordinary training that employees receive apart from that associated with the information collected under the HSR Rules and the corresponding Notification and Report Form.

David C. Shonka

Acting General Counsel

[FR Doc. 2010–11701 Filed 5–14–10; 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Application Requirements for the LIHEAP and Detailed Model Plan.

OMB No.: 0970–0075.

Description: States, including the District of Columbia, Tribes, tribal organizations and territories applying for LIHEAP block grant funds must submit an annual application (Model Plan) that meets the LIHEAP statutory and regulatory requirements prior to receiving Federal funds. A detailed application must be submitted every 3 years. Abbreviated applications may be submitted in alternate years. There have been no changes in the Model Plan since the approval of the addition of the LIHEAP Program Integrity Assessment and Plan by the Office of Management and Budget earlier this year.

Presidential Executive Order 13520, reducing Improper Payments and Eliminating Waste in Federal Programs, issued in November 2009, encourages Federal agencies to take deliberate and immediate action to eliminate fraud and improper payments. As part of the review of programs subsequent to this executive order, HHS has determined that additional information from each administering agency is necessary to assess grantee measures that are in place to prevent, detect or address waste, fraud and abuse in LIHEAP programs.

Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Model Plan	65	1	1	65
Abbreviated Model Plan	115	1	0.33	37.95
LIHEAP Program Integrity Assessment and Plan	180	1	1	180

Estimated Total Annual Burden Hours: 282.95.

In compliance with the requirements of section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and

transactions involving an acquisition of 50% or more of an entity's assets or voting securities. The rationale for this exclusion is that the remainder, 38 transactions, reflects incremental acquisitions that fell between notification and filing fee thresholds and thus would likely need more precise valuation to determine which side of a threshold the transaction falls upon. The resulting fiscal year 2009 total, 38, is then used to project the fiscal year 2010 volume of such transactions. To do this, we first calculated the proportion this net figure represents in relation to the total fiscal year 2009 non-index transactions: 38 ÷ 716 = 5.3%.

This percentage is then applied to the projected number of fiscal year 2010 non-index transactions in order to estimate the proportion of them that will require more precise valuation. Assuming that half the projected number of fiscal year 2010 non-index *filings* will constitute the number of associated *transactions*, that would result in approximately 421 non-index transactions (841 ÷ 2). To this we then carry over and apply the above 5.3% apportionment to arrive at an estimate of 22 non-index transactions in fiscal year 2010 that will require more precise measurement.

[6] Only the acquiring person is subject to a filing fee; thus, this specific focus.

[7] The FTC's previous estimate of $425 per hour has been increased by the Social Security COLA percentage for fiscal years 2007 - fiscal year 2009 (fiscal year 2007(2.3%), fiscal year 2008 (5.8%)), fiscal year 2009 (0%)).

Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 11, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–11647 Filed 5–14–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: LIHEAP Program Integrity Assessment and Plan.

OMB No.: New Collection.

Description: Under prior guidance, the Chief Executive Officer in States, Tribes or Territories is required to certify in the LIHEAP State Plan that the grantee will uphold all rules, regulations, and policies associated with the LIHEAP program. As cited above, grantees must have in place policies that address waste, fraud and abuse.

Presidential Executive Order 13520, reducing Improper Payments and Eliminating Waste in Federal Programs, issued in November 2009, encourages Federal agencies to take deliberate and immediate action to eliminate fraud and improper payments. As part of the review of programs subsequent to this executive order, HHS has determined that additional information from each administering agency is necessary to assess grantee measures that are in place to prevent, detect or address waste, fraud and abuse in LIHEAP programs.

The Administration for Children and Families is requesting the Office of Management and Budget to authorize emergency processing of its information collection clearance of the LIHEAP Program Integrity Assessment and Plan in order for submission by grantees with their applications for fiscal year 2011 funding.

Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Program Integrity Assessment and Plan	180	1	1	180
Detailed Model Plan	65	1	1	65
Abbreviated Model Plan	115	1	.33	38
Estimated Total Annual Burden Hours				283

Additional Information:

ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by May 30, 2010. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, FAX 202–395–7285, or e-mail *oira_submission@omb.eop.gov*.

Dated: May 20, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–11800 Filed 5–14–10; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control; Special Emphasis Panel (SEP): A Prospective Birth Cohort Study Involving Environmental Uranium Exposure in the Navajo Nation (U01), Request for Applications (RFA) TS10–001, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), announces the aforementioned meeting:

Times and Date: 1 p.m.–4 p.m., July 8, 2010 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Section 10(d) of Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to "A Prospective Birth Cohort Study Involving Environmental Uranium Exposure in the Navajo Nation (U01), (RFA) TS10–001".

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Jane Suen, Dr.P.H., M.S., National Center for Injury Prevention and Control, Office of the Director, Extramural Research Program Office, 4770 Buford Highway, NE., Mailstop F–63, Atlanta, Georgia 30341, Telephone (770) 488–4281.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 6, 2010.

Elaine L. Baker,

Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 2010–11414 Filed 5–14–10; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel; K99/R00—Pathway to Independence.

Date: June 17, 2010.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Tyson's Corner, 1960 Chain Bridge Road, McLean, VA 22102.

Contact Person: Megan Libbey, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Bethesda, MD 20892–9609, 301–402–6807, *libbeym@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos.93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS).

Dated: May 11, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11685 Filed 5–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Linking nanomaterial physical characteristics with biological properties.

Date: June 8–9, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Raleigh-Durham Airport at RTP, 4810 Page Creek Lane, Durham, NC 27703.

Contact Person: Sally Eckert-Tilotta, PhD, Scientific Review Officer, Nat. Institute of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, Research Triangle Park, NC 27709. (919) 541–1446. *eckertt1@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Analytical Chemistry Services for the National Toxicology Program.

Date: June 17, 2010.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Research Triangle Park, 4700 Guardian Drive, Durham, NC 27703.

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709. (919) 541–0752. *mcgee1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 11, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11692 Filed 5–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Brain Bank Resource Review.

Date: June 9, 2010.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: David W. Miller, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 11, 2010.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2010–11689 Filed 5–14–10; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Voluntary Customer Survey

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; Proposal to establish a new collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on a proposed information collection requirement concerning a Voluntary Customer Survey. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before July 16, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, Attn: Tracey Denning, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC. 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document the CBP is soliciting comments concerning the following information collection:

Title: Voluntary Customer Survey.

OMB Number: Will be assigned upon approval.

Abstract: Customs and Border Protection (CBP) plans to conduct a customer survey of international travelers seeking entry into the United States at the twenty highest volume airports in order to determine perceptions of the arrival process at our ports of entry. This voluntary customer survey will be conducted through short verbal surveys of travelers as they move through entry processing areas. Travelers who do not speak English will be given a written version of the survey in their language and may submit their responses in writing. The survey will include questions about wait times, ease of entry processing, and the level of communication, efficiency and professionalism of CBP officers. The results and analysis of the survey responses will be used to identify actionable items to improve services to the traveling public with respect to the entry processes for travelers arriving at United States air ports of entry.

Current Actions: This submission is being made to establish a new collection of information.

Type of Review: Approval of a new collection of information.

Affected Public: Individuals, Travelers.

Estimated Number of Respondents: 21,000.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 1,743.

Dated: May 12, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–11724 Filed 5–14–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2010–0032]

Federal Radiological Preparedness Coordinating Committee

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of public meeting.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) is holding a public meeting on June 3, 2010 in Arlington, VA.

DATES: The meeting will take place on June 3, 2010. The session open to the public will be from 9 a.m. to 11 a.m. Send written statements and requests to make oral statements to the contact person listed below by close of business May 21, 2010.

ADDRESSES: The meeting will be held at the Crystal City Courtyard Marriott, Blue Ridge Shenandoah Conference Room, located at 2899 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Timothy Greten, FRPCC Executive Secretary, DHS/FEMA, 1800 South Bell Street—CC847, Mail Stop 3025, Arlington, VA 20598–3025; telephone (202) 646–3907; fax (703) 305–0837; or e-mail *timothy.greten@dhs.gov*.

SUPPLEMENTARY INFORMATION: The role and functions of the Federal Radiological Preparedness Coordinating Committee (FRPCC) are described in 44 CFR 351.10(a) and 351.11(a). The FRPCC is holding a public meeting on June 3, 2010, from 9 a.m. to 11 a.m., at the Crystal City Courtyard Marriott, Blue Ridge Shenandoah Conference Room, located at 2899 Jefferson Davis Highway, Arlington, VA 22202. Please note that the meeting may close early. This meeting is open to the public. Public meeting participants must pre-register to be admitted to the meeting. To pre-register, please provide your name and telephone number by close of business on May 21, 2010, to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above.

The tentative agenda for the FRPCC meeting includes: (1) Introductions, (2) reports from FRPCC Subcommittees, (3) old business and new business, and (4) business from the floor. The FRPCC Chair shall carry out the meeting in a way that will facilitate the orderly conduct of business. Reasonable provisions will be made, if time permits, for oral statements from the public of not more than five minutes in length. Any member of the public who wishes to make an oral statement at the meeting should send a written request for time by close of business on May 21, 2010, to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above. Any member of the public who wishes to file a written statement with the FRPCC should provide the statement by close of business on May 21, 2010, to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please write or call the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above as soon as possible.

Authority: 44 CFR 351.10(a) and 351.11(a).

Timothy W. Manning,

Deputy Administrator, Protection and National Preparedness, Federal Emergency Management Agency.

[FR Doc. 2010–11673 Filed 5–14–10; 8:45 am]

BILLING CODE 9110–21–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5323–N–03]

Final Notice on Ending the "Hold-Harmless" Policy in Calculating Section 8 Income Limits Under the United States Housing Act of 1937

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Final notice.

SUMMARY: Today's notice announces that HUD will allow Section 8 income limits to decrease beginning with the Fiscal Year (FY) 2010 income limits, but will limit all annual decreases to no more than 5 percent and limit all annual increases to 5 percent or twice the change in national median family income, whichever is greater. This notice follows notices of September 14, 2009, and October 7, 2009, that solicited public comment on HUD's proposal to discontinue its "hold-harmless" policy. HUD's hold-harmless policy maintained Section 8 income limits for certain areas at previously published levels when reductions would otherwise have resulted from changes in median family income estimates, housing cost adjustment data, median family income update methodology, income limit methodology, or metropolitan area definitions. HUD has also decided that rents used in its HOME Investment Partnerships program (HOME) will continue to be held harmless and that income limits for rural housing programs will continue their current hold-harmless policy, based on different area definitions.

DATES: *Effective Date:* May 17, 2010.

FOR FURTHER INFORMATION CONTACT: For technical information on the methodology used to develop income limits and median family income estimates, please call the HUD USER information line at 800–245–2691 or access the information on the HUD Web site, *http://www.huduser.org/portal/datasets/il.html.* That Web site lists current and historical income limits. Furthermore, HUD maintains an interactive on-line documentation system for income limits and median family income estimates. The documentation system provides interested users with their income limits prior to the application of the hold-harmless policy in areas currently being held harmless. The FY 2009 documentation system may be accessed at *http://www.huduser.org/portal/datasets/il/index_il2009.html.* Questions may be addressed to Mark Stanton or Marie Lihn, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone number 202–708–0590. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339. *Electronic Data Availability:* This **Federal Register** notice is available electronically from the HUD news page: *http://www.hud.gov/offices/adm/hudclips/index.cfm.* **Federal Register** notices also are available electronically from the U.S. Government Printing Office Web site: *http://www.gpoaccess.gov/fr/index.html.* This **Federal Register** notice also will be posted on the following HUD Web site: *http://www.huduser.org/portal/datasets/il.html.*

SUPPLEMENTARY INFORMATION:

I. Background: The September 14, 2009, Notice

On September 14, 2009, HUD published a notice in the **Federal Register** (74 FR 47016) seeking public comment on the impact of eliminating the hold-harmless policy for Section 8 income limits while continuing this policy for rents in the HOME program.[1] In the September 14, 2009, notice, HUD stated that through FY 2009, it would continue its policy of maintaining Section 8 income limits for HUD rental subsidy programs at the previously published level in cases where HUD's estimate of area median family income or housing cost adjustment data, or changes in calculation methodology, would lead to a lower income limit than was previously published. This hold-harmless policy was implemented to avoid jeopardizing the financial feasibility of existing housing projects in instances where program rents were tied to Section 8 income limits. Under the hold-harmless policy, Section 8 income limits would be maintained until such a time as income limit calculations produced increases.

The primary Federal housing programs that rely on Section 8 income limits other than the Section 8 Voucher program are multifamily tax subsidy projects (MTSPs) financed with low-income housing tax credits (LIHTCs) under section 42 of the Internal Revenue Code of 1986 (IRC) and tax-exempt private activity bonds under section 142 of the IRC. Under these programs, maximum rents for units in MTSPs are generally 30 percent of the HUD-published Section 8 income limit for a four-person household, adjusted by the number of bedrooms in a unit. MTSPs use of Section 8 income limits to determine rents was HUD's principal reason for establishing the hold-harmless policy; otherwise, when Section 8 income limits fall, the maximum rent that private owners can charge low-income tenants in the MTSPs falls, which may place a financial strain on existing MTSPs. MTSP rents, however, are now protected from falling under the Housing and Economic Recovery Act of 2008 (Pub. L. 110–289, approved July 30, 2008) (HERA).

HERA eliminates the need for HUD to continue its hold-harmless policy for the benefit of MTSPs. Specifically, Section 3009 of HERA amended IRC section 142(d) (26 U.S.C. 142 (note)) by implementing a statutory project-level hold-harmless provision for existing MTSPs. The provision applies to all MTSP projects and is not limited to projects benefiting from the HUD hold-harmless policy. As a result of this provision, determinations of area median gross income with respect to the project may not be less than the determination with respect to the project made for the preceding year. Section 3009 also provides additional

[1] Section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)(2)) (1937 Act) provides for assisted housing for "low-income families" and "very low-income families," and defines these terms as families whose incomes are below 80 percent and 50 percent, respectively, of the median family income for the area with adjustments for family size. These income limits are referred to as "Section 8 income limits" because of the historical and statutory links with that program, although the same income limits are also used as eligibility criteria by several other Federal programs. The 1937 Act specifies conditions under which Section 8 income limits are to be adjusted either on a designated area basis or because of unusually high or low family incomes or housing-cost-to-income relationships. Section 8 income limits are calculated using Section 8 Fair Market Rent (FMR) area definitions, which in turn are based on Office of Management and Budget metropolitan statistical area definitions.

relief for MTSPs in areas where HUD modified its methodology to include additional data in its calculation of area median gross income. For these "HUD hold-harmless impacted projects," the area median gross income will be the greater of the amount determined without regard to this provision or the 2008 determination, plus any increase after 2008. MTSP income limits as specified by Section 3009 are available at *http://www.huduser.org/portal/datasets/mtsp.html.*

Since other Federal programs use Section 8 income levels to determine program eligibility, the September 14, 2009, notice requested public comment on whether HUD should discontinue its hold-harmless policy. Other Federal programs that use the Section 8 income levels include, but may not be limited to, the Department of Treasury's tax-exempt Mortgage Revenue Bond program for Homeownership Financing; the Department of Agriculture's Rental and Ownership Assistance programs; the Federal Deposit Insurance Corporation's Disposition of Multifamily Housing to Non-profit and Public Agencies and the Disposition of Single Family Housing; the Federal Housing Finance Agency's Rental Program Funding Priorities and Homeownership Funding Priorities; the Veterans Administration's Eligibility for Disability Income Support Payments; and the HUD-administered, governmentwide Uniform Relocation Act (42 U.S.C. 4601, *et seq.*) to determine the extent of replacement housing assistance. Applicable income limits are modified to meet the requirements of each of these programs, but each starts with the Section 8 very low-income limit that incorporates high and low housing cost adjustments and the State nonmetropolitan median as the basis for a minimum.

Finally, the September 14, 2009, notice stated that determinations of Difficult Development Areas (DDAs) under section 42 of the IRC would be affected by the decision to discontinue the hold-harmless policy. HUD also requested public comment on whether the hold-harmless policy should be maintained with respect to Section 8 income limits used for calculating HOME program rents. HUD noted that maintaining the hold-harmless policy for HOME program rents would prevent such rents from falling in areas where incomes may be falling, while discontinuing the hold-harmless policy with respect to eligibility requirements would help target HOME funds for use by families with lower incomes and greater need.

The September 14, 2009, notice was corrected by a notice published on October 7, 2009, (74 FR 51615), which also extended the public comment deadline to November 6, 2009. As discussed later in today's notice, HUD has considered the comments filed in response to these **Federal Register** publications.

II. Discussions With Federal Programs

HUD's Office of Policy Development and Research discussed whether to eliminate its hold-harmless policy for Section 8 income limits with each HUD program director and all other Federal agencies that use Section 8 income limits for rent and income eligibility. For its HOME program, which is not included within the statutory hold-harmless provision provided by HERA, HUD determined that rents will be held harmless, but that income limits will be allowed to fluctuate with the market. In discussions with the Internal Revenue Service, it was clarified that existing MTSPs would be protected from future rent declines and that it was appropriate to allow declines in income eligibility for both multi-family and single family tax credits. The Department of Agriculture's Rural Housing Service requested that HUD continue its hold-harmless policy, which is based on some unique area definitions. No other Federal agency provided HUD with substantive comment regarding its plans to modify the hold-harmless policy. Additional details about the specific income limits used by each of these programs can be found at: *http://www.huduser.org/portal/datasets/il/il09/IncomeLimitsBriefingMaterial_FY09.pdf.*

III. Overview of Key Public Comment Concerns

By the close of the public comment period on November 6, 2009, HUD received a total of 32 public comments. Most were opposed to the elimination of hold harmless for Section 8 income limits. The most common reason expressed for the opposition to the elimination of the hold-harmless policy was that many affordable housing developments use Section 8 income limits to set rents and the possibility of lower rents for these projects would be detrimental to existing and future project development; existing projects would be at risk for financial default, while future projects would have difficulty securing financing. One commenter noted that few tenants would benefit from discontinuing the hold-harmless policy, based on the impact to Section 8 tenants as cited by HUD in its notice. Many commenters, while preferring that HUD publish only one hold-harmless income limit per area, recognized the need for income limits that are not held harmless in programs where HUD provides direct rental assistance. As a result, these commenters recommended that HUD issue two sets of income limits; one for direct rental subsidies, and one for all affordable housing programs, regardless of the "placed-in-service" date. HUD considered these comments, but finds that it has no authority to establish income limits for all affordable housing programs such as those funded with city/county levy, State housing trust funds, or other sources that may be contractually tied to Section 8 income limits. HUD's authority to produce individual program income limits covers: Section 8 programs; MTSP income limits for HUD Hold-Harmless Impacted Projects as defined in HERA; the HOME and Community Development Block Grant (CDBG) programs, which use parallel language in establishing income limit methodology, rather than incorporating Section 8 income limits by reference; and, through statutory consultation requirements, the Department of Agriculture's Rural Housing Service programs. To ensure clarity in future estimates, HUD will reference the specific programs for which the different published income limits will apply.

Some commenters noted the impact of HUD's proposed policy on the purchase of single-family homes using tax-exempt mortgage revenue bonds. This program is governed by Section 143 of the IRC and was not amended by HERA. Section 8 income limits are used to determine income eligibility for this program. One commenter noted that this is not the time to limit the pool of eligible families who can take on the rigors of homeownership, which elimination of the hold-harmless policy may do. Commenters from a rural State questioned HUD's reliance on American Community Survey (ACS) income data, noting instances where some counties are not covered by the 3-year ACS data. These commenters assert that small rural states are disproportionately impacted by data changes. To address these concerns, HUD has decided to impose a cap on the annual decreases in income limits of a maximum of 5 percent or, in the case of increases, 5 percent or twice the change in national median family income, whichever is greater. Additionally, beginning with income data used to develop FY 2011 income limits, HUD will use 5-year

ACS, data which will cover even the smallest areas.

Nine of the 24 comments filed by State or regional agencies or developers or their representatives were from the Northwest/Alaska region (HUD Region 10). Commenters included State housing finance commissions, housing and community service organizations, and legal service agencies. The commenters did not identify unique regional, State, or local programs that would be affected more than other states or regions. They claimed, however, that properties funded with HOME, CDBG, city/county levy, or State housing trust funds will face serious cash flow issues if the hold-harmless policy is eliminated. These commenters requested that HUD do whatever necessary, including seeking legislation, to give all these programs the same hold-harmless income limit, irrespective of the "placed-in-service" date. As noted, however, HUD is required to implement Section 3009 of HERA, which gives MTSPs different income limits based on the placed-in-service date. Projects that were held harmless in 2007 or 2008 are eligible for increases in income limits based on increases in the median family income. Projects that were not held harmless in 2007 or 2008 or were placed-in-service after that date do not qualify for this increase. HUD's authority to produce individual program income limits covers: Section 8 programs; MTSP income limits in HUD Hold-Harmless Impacted Projects as defined in HERA; the HOME and CDBG programs, which use parallel language in establishing income limit methodology rather than incorporating Section 8 income limits by reference; and, through statutory consultation requirements, the Department of Agriculture's Rural Housing Service programs.

A joint comment was filed by several public interest and trade groups recommending that HUD delay eliminating hold harmless for the Section 8 income limits, because legislative and regulatory changes are required for programs not protected by HERA to mitigate the impact on the financial stability of new projects and protect those in planning phases. The commenters asserted that HUD must amend its regulations to allow rent stabilization in the HOME program. The commenters also stated that eliminating the hold-harmless policy would, for the Mortgage Revenue Bond program, which provides below-market interest rate mortgages to moderate-income first-time homebuyers, and the Neighborhood Stabilization Program (NSP), which assists households within a range of incomes, place grantees in violation of the respective programs' requirements if income limits decline. Moreover, the commenters noted that the elimination of hold harmless would be exacerbated by applying it when incomes are declining and recommended that HUD delay any policy change until the income data no longer reflect declines from the recession, which the commenters estimated will be by the FY 2012 income limits. As noted in this notice, however, HUD has determined that rents used in the HOME program will continue to be held harmless, precluding a need for regulatory change. The NSP program relies on elements of both the HOME and CDBG program for continued affordability. To the extent that an NSP grantee chooses to apply HOME rents, they will be held harmless under the HOME program. HUD will review issuing appropriate transition guidance for CDBG grantees, including NSP grantees that choose to develop their own continued affordability policies. The possible destabilization of neighborhoods that fall out of compliance when income limits fall will be limited by the cap of the maximum of 5 percent, and by changes in program implementation that limit the eligibility determination to a specific date, thereby preventing areas from falling out of compliance.

Another commenter opposed the elimination of the hold-harmless policy because there will not be a minimal impact from the elimination for the Section 8 rental assistance program, as stated in the original and revised **Federal Register** notices on this policy. The commenter noted that changes in the boundaries of its metropolitan area magnify the impact of change in this change of policy. HUD will address this issue by the implementation of caps and floors on the annual percentage change in income limits.

Several other commenters strongly supported the elimination of the income limits hold-harmless policy. One commenter noted that it has worked hard to formally decouple the LIHTC program from the HUD Section 8 income limits. A second stated that the core users of income limits are Housing Choice Voucher, Section 8 project-based, and Public Housing programs and that this change will have little impact on these programs. Both commenters stated that the current hold-harmless policy does not protect tenants from artificially high rents and stressed that renters' interests also should be considered. The commenter also stated that income limits should be relatively stable because the ACS is capable of producing frequent updates. In the past, most major changes occurred from rebenchmarking income data from the decennial census. With income data collected annually by the ACS, this should not occur. Both commenters suggest mediating the impact of eliminating the hold-harmless policy by limiting annual changes; one proposed a cap in changes of up to plus or minus 5 percent, while the second recommended an amount equal to double the change in the median family income.

IV. Discussion of Public Comments

Comment: The hold-harmless policy should be eliminated because doing so will have little to no impact on existing program participants or housing providers. One commenter stated that the Housing Choice Voucher, Section 8 project-based, and Public Housing programs are the core users of the income limits, and that the only impact of the elimination of the hold-harmless policy on those programs will be to lower the eligible income eligibility for applicants being admitted to the program in a given year and only in those jurisdictions that experience a measured decline in income. It will have little to no impact on existing program participants or housing providers.

HUD Response: HUD agrees that the hold-harmless policy should be eliminated in order to provide better income targeting for affordable housing.

Comment: Eliminating the hold-harmless policy will allow target thresholds to be set more accurately. According to one commenter, the hold-harmless policy has inflated income limits making eligibility and targeting levels artificially high. Elimination of the policy would allow voucher, project-based Section 8 and public housing eligibility and targeting thresholds to be established more accurately, thereby better directing assistance to families with the income level that Congress intended to help.

HUD Response: HUD agrees that elimination of the hold-harmless policy will allow a more accurate targeting of assistance to the families that Congress intends to help.

Comment: The hold-harmless policy should be eliminated because it is no longer needed due to the enactment of HERA. The commenter stated that, given HERA, HUD's policy of maintaining artificially high income limits can no longer be justified. The hold-harmless policy increases the number of households eligible for Public Housing and Section 8 Voucher programs, and more importantly, undercuts the statutory mandate that

these programs be targeted to those households with the lowest incomes, which are most in need of housing assistance. Discontinuing the hold-harmless policy will make it more likely that Federal housing programs will target persons and communities with the most need as Congress has intended, the commenter stated.

HUD Response: HUD agrees that HERA eliminated the principal basis for the income limits hold-harmless policy. It is HUD's intent to target affordable housing resources using the most accurate information. Eliminating the hold-harmless policy will prevent income limits in certain areas from being established at artificially high levels and, as a result, ensure that HUD can better target affordable housing resources.

Comment: The hold-harmless policy should be eliminated because manipulating calculations of Area Median Income (AMI) is ill advised. One commenter stated that the hold-harmless policy used in calculating income limits under Section 8 should be eliminated because the efforts to mitigate the negative impacts of the use of AMI, by manipulating data, only serve to complicate operations unnecessarily. When the impact of the mitigations result in calculations of AMI that are higher than what is derived from the data from the Census and the ACS, low-income tenants wind up bearing a heavier rent burden without the benefit of any of the artificially inflated income. These side effects raise serious questions about the appropriateness of the hold-harmless policy as a remedy, the commenter stated.

HUD Response: HUD agrees that the hold-harmless policy can be detrimental to low-income renters in MTSPs where tenant rents are based on income limits rather than individual tenant incomes and who must pay rents based on artificially inflated income limits.

Comment: The hold-harmless policy should be maintained in order to avoid an increased administrative burden. Several commenters stated that the hold-harmless policy should be maintained in order to avoid increased administrative burden for owners, property managers, and State and local agencies. If HUD discontinued the hold-harmless policy, projects funded from multiple sources will have two sets of income and rent limits. Some commenters stated that implementation of MTSP and HERA special income limits for tax-credit and bond-financed properties, and a separation from Section 8 income limits, while well intentioned, would create a massive administrative problem affecting public funders, owners, property managers, and residents of affordable housing. Another commenter stated that for years, housing advocates have worked to make other HUD programs compatible with the IRS Section 42 Tax Credit Program and that requiring alternative income limits would impede these efforts.

HUD Response: HUD does not agree that the removal of the hold-harmless policy would create substantially more administrative burden for MTSPs. Project managers and MTSP compliance monitors would still need to observe HUD's annual releases of new income limits to determine if they are eligible for income limit and rent increases. The comparison point will be different. Rather than looking at HUD's previous year's income limits for their area, project managers and MTSP compliance monitors will need to compare the new income limits to the income limits projects are operating under currently to see if they are eligible for an increase in income limits and rents. This information should be readily available. The statutory hold-harmless provision in HERA prevents income limits and rents from ever falling below the highest levels the project ever operated under. Eliminating the Section 8 income limit hold-harmless policy does not mean that rents for MTSPs will decline over the life of a project.

Comment: If the hold-harmless provision is eliminated, fewer affordable housing projects will be built. Several commenters stated that without hold-harmless protection, the result will be fewer overall projects being built, and an underwriting volatility that is counterproductive to HUD's overall mission to build affordable housing. Reducing the rent-supported underwriting structure of these developments would make it virtually impossible to finance many new projects. These commenters stressed that eliminating the provision will make it more difficult for lenders to underwrite affordable housing, which will reduce the amount of affordable housing, and that the hold-harmless policy has enabled banks and investors to finance the development of mixed-income communities that include units to serve the very low-income.

HUD Response: Maintaining Section 8 Income Limits at artificially high levels is not a sustainable way to encourage development of affordable housing. Furthermore, rents for the HOME program and rents for MTSPs will not be allowed to decline once the projects are placed-in-service, so underwriters need not worry about rents decreasing in operating projects. Other programs with rents tied to the Section 8 income limits will have to institute their own regulatory changes to prevent rent decreases over the life of a project, or will have to allow declines commensurate with the market. HUD will limit any decline in income limits to the maximum of 5 percent or, in the case of increase, 5 percent or twice the change in national median family income, whichever is greater, to reduce the potential administrative impact in determining income eligibility and to further provide greater certainty regarding revenue stream concerns.

Comment: Eliminating the hold-harmless policy would threaten the economic viability of thousands of properties nationwide that have rent limits contractually tied to Section 8 income limits. According to several commenters, suspension of the hold-harmless policy for Section 8 income limits would create unintended negative consequences for low-income housing tax-credit, bond, and other affordable housing projects that mix Federal, State, and/or local funding to create affordable rental housing serving the lowest incomes. Several commenters stated that they understood HUD's reasons for changing its hold-harmless policy for the Section 8 program and its desire to have a separate set of limits for Section 8 that accurately reflect area incomes. However, properties funded with HOME, city and county funds, and State Housing Trust Funds have rent limits contractually tied to Section 8 income limits. CDBG affordable rent policies are set at the local level, by each grantee, and are likely to be tied to the Section 8 income limits. If HUD changes the hold-harmless policy, these commenters stated, the result would be decreased rental income for properties that remain tied to Section 8 program limits and properties using Section 8 income limits would face serious cash flow problems. Such a decrease in rental income would result in insufficient cash flow so owners will defer maintenance on buildings, causing the rate of foreclosure to increase.

HUD Response: HUD has decided to hold-harmless the rents for properties funded with HOME, but not the income limits to determine eligibility. HUD will consider issuing transition guidance for CDBG grantees that have linked rents to Section 8 income limits. HUD's authority to produce individual program income limits covers Section 8 programs; MTSP income limits in "HUD Hold-Harmless Impacted Projects," as defined in HERA; the HOME and CDBG programs, which use parallel language in establishing income limit

methodology rather than incorporating Section 8 income limits by reference; and, through statutory consultation requirements, the Department of Agriculture's Rural Housing Service programs. Administrators of city, county, or State housing subsidy programs using Section 8 income limits to establish eligibility and/or rents should establish their own hold-harmless policies, if needed and desired. HUD wants to serve more low-income residents and target its funds appropriately, while serving the affordable housing market.

Comment: Eliminating the hold-harmless policy will put many affordable multifamily properties that receive HOME and CDBG funds at risk. One commenter stated that many of the assets in the current housing stock of affordable multifamily properties could be put at risk as a result of the proposed policy change because the change would affect the level of income used to qualify tenants and the maximum rents charged in both tax-credit and other projects that receive HOME and CDBG funds. These projects are required to adhere to the more restrictive income guidelines and rent levels issued by HUD's Office of Community Planning and Development.

HUD Response: HUD has evaluated the impact of this policy on its programs and for projects funded by HOME and CDBG funds. HUD believes that holding the HOME rents harmless and issuing appropriate transition guidance, if necessary, for CDBG projects will sufficiently protect these projects.

Comment: This notice disregards the negative impact this proposal will have on the future development of MTSPs. Despite the fact that existing MTSPs are protected by HERA, the ability to develop and rehabilitate new housing through MTSPs will be negatively impacted by HUD discontinuing its hold-harmless policy, stated one commenter. According to the commenter, MTSP underwriting is based on the maximum rent potential, which is derived from the HUD very-low (50 percent) income limits. Currently, developers are assured that their rent potential will not decrease arbitrarily. Rents are also affected by increased utility costs. Removing the hold-harmless policy would impact future development and add more risk to a development scenario where rents often do decrease as utility costs increase.

HUD Response: An MTSP unit determines maximum rents based on income limits, irrespective of the market rate for rent or utilities or the tenant's actual income. Currently, the rent potential is based on the determination of what people can afford. Incomes do go up and down and rents do go up and down. This is not arbitrary, but is driven by market forces. Utilities rates go up and down as well, though these costs may or may not be included in all project rents. The decrease of rents when utilities increase is not a certainty and is of no concern for the MTSPs since the rents are not based on either factor; they are based on incomes.

HUD acknowledges that the uncertainty in the projected revenue stream is increased in the planning phase by eliminating the hold-harmless policy. Developers will have to manage this risk. HUD will limit the uncertainty in the projected revenue stream by imposing a cap on annual decreases to the maximum of 5 percent or, in the case of increases, 5 percent or twice the change in national median family income, whichever is greater. This cap, along with the use of the 5-year ACS data beginning with the FY 2011 Section 8 income limits, will dampen the annual changes and should reduce risk. Once the project is placed-in-service, HERA eliminates the risk of declining income limits.

Comment: MTSP projects should be held to the same hold-harmless standard for both incomes and rents. New development projects are underwritten to the lowest rents among all proposed funding sources, thus no one program will benefit from having a higher hold-harmless rent if other program rents are not held to that same standard, stated two commenters. Having different income and rent standards also makes it more difficult for project owners and agency staff to do long-term compliance monitoring. For new development projects, both incomes and rents should be held harmless according to the limits in place when the reservation of tax credits or the award of Federal funds is made for the project, whichever is later in time, stated one commenter. Both commenters stated that maintaining income limits at levels in place the year the project is underwritten prevents projects from becoming infeasible, due to declines in rents that may occur between the time the funds are reserved for a project and the project's loan closing or placed-in-service date.

HUD Response: Different income and rent standards were created by HERA. The hold-harmless policy HUD is instituting for HOME rents is comparable to MTSPs that are not HUD Hold-Harmless Impacted Projects as defined in HERA. These HERA-defined rents are higher, and HUD has no authority to go back and grant these rents to projects funded under HOME. HUD's authority to produce individual program income limits covers: Section 8 programs; MTSP income limits in HUD Hold-Harmless Impacted Projects as defined in HERA; the HOME and CDBG programs, which use parallel language in establishing income limit methodology rather than incorporating Section 8 income limits by reference; and, through statutory consultation requirements, the Department of Agriculture's Rural Housing Service programs. For rental housing subsidy programs that rely on Section 8 income limits for establishing eligibility and/or unit rents that are administered by State and local governments, administrators should establish a hold-harmless policy if desirable to do so. While HUD agrees that it makes sense for the income/rent level of a new MTSP to be established at the time of the loan's closing and not subject to the risk of changes between the loan closing and the placed-in-service date, HUD has no authority over this policy. HUD advises developers to underwrite MTSPs under a "worst-case scenario" of a 5 percent decline from current income limits and maximum rents to ensure that if such a change occurs, the project will be able to go forward. Such an approach has the added benefit of widening the pool of eligible low-income renters, should the income limits either not decline, or decline by an amount smaller than 5 percent.

Comment: The term "existing MTSPs" is unclear, and it is unclear if future MTSP developments will be protected by HERA. According to the commenter, it is not clear if the term "existing MTSPs" refers only to current developments, or if once a new MTSP is developed or rehabilitated, such developments are then considered "existing" and will have their income limits held harmless and not have to be concerned with future rent cap reductions. A second commenter asked if future MTSPs will be protected by HERA. The commenter saw no indication that future developments would be similarly protected.

HUD Response: As new MTSPs come online, their unit rents and income limits are based on the currently applicable Section 8 income limits. For a given area, these income limits and rents may be lower than they were the previous year, but, going forward, a project's individual income limits will never decline; they will be held harmless for the life of the project at the highest level ever attained by the project. HUD views this as the clear intent of Congress in enacting the HERA hold-harmless provision.

Comment: HUD's hold-harmless policy has provided certainty and predictability to housing finance agencies and programs. According to one commenter, an income limit decrease from one year to the next for single-family, first-time homebuyers served by housing finance agencies would be disruptive and result in confusion and misunderstanding on the part of homebuyers, Realtors, and originating lenders. The hold-harmless policy has provided certainty and predictability to housing finance agencies and programs, stated the commenter.

HUD Response: HUD is limiting the impact of any decrease in income limits to the maximum of 5 percent, to make such fluctuations less problematic. However, HUD is committed to removing the hold-harmless policy to improve targeting of all funds for affordable housing to those that are intended for it by Congress. Should median incomes continue to decline, AMIs will ultimately reach their natural level; HUD's current plan to cap decreases at the maximum of 5 percent only slows this process, it does not stop it. Housing finance agencies should explore their options with respect to implementing their own hold-harmless rent policies.

Comment: Neither the intent nor the effect of the hold-harmless policy has been to maintain artificially high income limits. The hold-harmless policy smoothes a generally upward trend of successive median family income estimates, preventing a pattern of temporary declines followed by large increases, stated a commenter. In turn, for some programs, this ensures that rent levels do not fluctuate significantly, either up or down, on a year-to-year basis, which is desirable and a reason to maintain the hold-harmless policy, stated the commenter.

HUD Response: HUD agrees that the intent of its hold-harmless policy was not to maintain artificially high income limits, but that the effect, in some cases, has been just that. HUD will limit annual decreases to 5 percent and limit annual increases to 5 percent or twice the change in national median family income, whichever is greater, to limit changes up or down in Section 8 income limits. The current hold-harmless policy allows for any increase, and there have been increases over 5 percent from time to time. Large increases are no better for the affordable housing program than large decreases. The use of 5-year ACS data beginning in FY 2011 will further smooth the trend in income limit changes.

Comment: Investment in affordable housing properties will decline. According to some commenters, banks and investors will not invest in affordable housing properties where rental income may decline after their initial investment. Predictability and stability in income and expense projections are key underwriting considerations. Investors and lenders will not underwrite ventures where rental income may decline unpredictably, stated the commenters. Another commenter stated that without the assurance of stable rental income, banks and investors will no longer be willing to invest in the affordable housing industry, which will result in far fewer units being developed.

HUD Response: Rental income will not decline over time; HOME and MTSP rents will not decline over the life of the project. HUD does not want to limit the production of affordable housing. HUD's goal with this change is to provide more manageable rent increases (by capping increases to the maximum of 5 percent, or twice the change in national median family income) and to allow decreases in income limits used to determine eligibility for programs (also of no more than the maximum of 5 percent).

Comment: Eliminating the hold-harmless policy would detrimentally affect the extremely poor. One commenter wrote that eliminating the hold-harmless policy would harm the extremely poor by causing them to live in a financially more tenuous and volatile project. Because eliminating the hold-harmless policy would put the financial stability of MTSPs at risk, the commenter stated, discontinuing the hold-harmless policy for future MTSPs would likely be disastrous for high-cost, high-poverty cities. Another commenter stated that HUD's approach supports only projects that receive direct governmental rental subsidies, where lower incomes lead to lower tenant-share rents. In those cases, HUD will have to offset lower tenant share rents by larger Federal rental subsidies to preserve the fiscal operations and quality maintenance of the properties. The MTSP programs do not have such a rental subsidy fallback option.

HUD Response: HUD disagrees that extremely low-income tenants (defined as those at 30 percent of the median family income) will be required to take up tenancy in financially more tenuous and volatile projects because extremely low-income tenants are already priced out of MTSPs and, for the most part, require Section 8 vouchers for assistance. Additionally, as already stated, MTSPs will not be made more tenuous or volatile by HUD's proposed policy.

Comment: HUD cannot impose independent hold-harmless policies on the HOME program. Commenters stated that HUD cannot impose independent hold-harmless policies on rent income limitations or maximum rents in the HOME program without going through the official rule-making process. The regulations governing income targeting and maximum rent in rental programs for the HOME program at 24 CFR part 92 provide specific formulae and specific conditions under which the formulae may be altered, and a hold-harmless policy is not listed as legitimate grounds for alteration, stated a commenter.

HUD Response: HUD does not believe that a regulatory change is required in order to institute a hold-harmless policy for HOME rents.

Comment: A hold-harmless policy that is independent of the Section 8 income limits cannot be applied to the Treasury Department's Tax-Exempt Mortgage Revenue Bond Program without a legislative change. According to one commenter, allowing income limits to decline from one year to the next would cause problems in particular states, including confusion and resentment among potential buyers and administrative burdens for State agencies. Moreover, the commenter stated, section 143(f) of the IRC specifies that the 115 percent limitation on incomes of mortgagors under the MRB program be based on area median gross income, taking into account the regulations prescribed under Section 8 of the United States Housing Act of 1937. Therefore, a hold-harmless policy that is independent of the Section 8 income limits cannot be applied to the MRB program without a legislative change.

HUD Response: This issue was discussed with the IRS, and HUD was advised that the intent of Congress is better followed by allowing Section 8 income limits to decline. Once a borrower closes a loan financed with bonds issued under section 143 of the IRC, the borrower is not subject to eligibility reconsideration, because the borrower's income has increased or the applicable income limit has decreased. The intent of this program is to target a certain income category, and the hold-harmless policy obfuscates this income category.

Comment: It would be premature to remove a general hold-harmless policy from the income limits for the NSP. The commenter stated that after foreclosed properties have been purchased and repaired using NSP grants, these

properties must be used to assist households with incomes at or below 120 percent of the area median income. There is an additional requirement that 25 percent of the funds be used for households with incomes at or below 50 percent of area median income. If income limits decline after the 120 percent and 50 percent criteria for the NSP program have been properly documented, as could happen in the absence of a hold-harmless policy, NSP grantees in certain areas would be in violation of the NSP requirements. None of the issues that a temporary decline in income limits would cause in the NSP have been addressed in **Federal Register** notices or materials posted on the HUD Web site, stated the commenter.

HUD Response: As the commenter noted, most of this money has been allocated and the rest will be shortly. HUD will review issuing transition guidance for CDBG programs, including NSP, which will appropriately ensure eligibility over the life of a project to which assistance has already been provided.

Comment: Small states are impacted disproportionately by data changes. One commenter stated that the proposed change to the hold-harmless policy will create some unintended consequences. The commenter noted that the slightest change in sample sizes, counts, and methodological updates have a greater impact on small states, like her own. HUD changes its methodologies for calculating income limits with regularity. These changes can turn a steady stream of income levels into a dramatic shift, thereby lowering eligible income levels for housing programs from year to year, stated the commenter.

HUD Response: A careful reading of HUD's methodology documentation will show that HUD is doing everything justifiable to smooth out survey error fluctuations in its estimation and update processes. For example, the ACS data used in the income limit process is generally an update factor. As such, large changes are already limited. A survey estimate must pass stringent statistical tests before it is used. In addition, beginning with FY 2009 income limits, 3-year ACS data is used in this update process, so the sample size is not that small (estimates are available for areas as small as 20,000 persons). For the FY 2011 income limits, 5-year data will be used, which will further limit any fluctuations and will be the most comprehensive survey covering all geography for which income limits are set. Also, HUD will limit annual decreases to the maximum of 5 percent or, in the case of increases, 5 percent or twice the change in national median family income, whichever is greater, so that large changes from year to year will be extremely rare.

Comment: Many State and local governments have already incorporated HUD's AMIs into their own programs. A commenter stated that the existing hold-harmless policy with respect to AMI should be maintained because many State and local governments have incorporated HUD's AMIs into their own programs. Owners sign long-term contracts to limit rents to specified percentages of the established AMI. According to the commenter, such programs were designed by cities with the understanding that owners would not be faced with rent rollbacks when AMI estimates decreased. It is not clear how such provisions, which rely on HUD AMI, can be adjusted for rent reductions. The simplest way to maintain governmentally assisted rental properties is to maintain the existing hold-harmless policy with respect to changes in AMI, concluded the commenter.

HUD Response: State and local government program rents are calculated by the city or State agency that is administering the program. These rents can and should be held harmless for the life of a project, just as HUD is doing for the HOME program and HERA does for the MTSP program. The city or State agencies may impose their own hold-harmless rules when calculating rents.

Comment: HUD should ask Congress to enact legislation. Several commenters recommended that HUD ask Congress to enact legislation that would allow HUD to publish income limits that extend the hold-harmless provisions just granted to LIHTC projects under HERA, to all multifamily affordable housing units that utilize Federal funding, except units that receive direct HUD Section 8 rental subsidy.

HUD Response: HUD believes that all Federal rental subsidy programs that set rents according to some version of the Section 8 income limits are covered by an appropriate hold-harmless arrangement, so that such legislation is not necessary. MTSP programs are covered by the hold-harmless provisions of HERA; HUD will hold rents in HOME projects harmless and review issuing appropriate transition guidance for the CDBG program. HUD has a hold-harmless agreement with the Department of Agriculture's Rural Housing Service program that will continue.

Comment: HUD should consider a policy that slows adjustments. One commenter stated that changes in Census geography or HUD methodology may still lead to significant swings in HUD's estimates of area median income from year to year. If HUD chooses to implement a policy to mediate the impact of any potential swings in income limits, the commenter encouraged HUD to consider a policy that slows adjustments. Such a policy, if properly designed, would provide owners, program administrators, and tenants with a measure of security. A second commenter stated that there is a reasonable case for special protections against volatility in the income limits used for certain purposes, such as setting HOME rent caps. The commenter encouraged HUD to establish balanced protections that prevent both rent declines, which would harm owners in the HOME program, and sharp increases, which would harm tenants.

HUD Response: HUD agrees that large increases or decreases in Section 8 income limits should be avoided and, therefore, it will impose a cap on annual decreases to the maximum of 5 percent or, in the case of increases, 5 percent or twice the change in national median family income, whichever is greater. The hold-harmless policy did not limit large increases and this did prove harmful to tenants.

Comment: HUD should impose only two sets of income limits. Several commenters suggested that if HUD will not continue to use the hold-harmless provision, it should consider imposing two sets of income limits: Section 8 Rental Subsidy limits that apply only to units with direct rental subsidy and Multifamily Subsidy Program Limits that apply to all other affordable housing programs that employ the hold-harmless provision. Imposing two sets of limits would simplify income limits for residents, property managers, and developers and fulfill the purpose of the HERA legislation.

HUD Response: HUD believes that the elimination of the hold-harmless policy for Section 8 income limits does fulfill the intent of HERA. In HERA, it was the intent of Congress to grant MTSPs project-level hold-harmless income limits to determine income eligibility and maximum rents, and it was the intent of Congress to eliminate the Section 8 income limit hold-harmless policy so that MTSPs that go into service in the future can be based on higher or lower income limits, as warranted by data.

Comment: HUD should publish income limits and apply them to all affordable housing programs with the exception of units with Section 8 rental subsidy. Several commenters, in connection with the previous comment,

stated that HUD should publish Multifamily Subsidy Income Limits or HERA HUD Hold-Harmless Impacted Projects Income Limits for any given county or metropolitan area and apply such limits to all affordable housing programs, with the exception of units with Section 8 rental subsidy. The commenters stated that this proposal would prevent properties funded with HOME, CDBG, city/county levy, State Housing Trust funds, and other sources contractually tied to Section 8 limits from facing the serious cash flow issues that will occur if HUD eliminates the hold-harmless policy, as currently proposed.

HUD Response: Congress did not grant all existing and future MTSPs the ability to use the HERA HUD Hold-Harmless Impacted Projects income limits, and it is outside HUD's authority to do so. HUD has no authority to establish income limits specifically for use by State or local government rental subsidy programs. For rental housing subsidy programs that rely on Section 8 income limits for establishing eligibility and/or unit rents that are administered by State and local governments, administrators should establish a hold-harmless policy if it is desirable to do so.

Comment: HUD should create a streamlined waiver process. One commenter stated that HUD should create a streamlined waiver process to permit HOME-participating jurisdictions to quickly re-assist projects in cases where lower rents necessitate that projects receive more subsidy to remain financially stable. Increases in operating expenses over time, coupled with lower rent revenues resulting from loss of establishing hold-harmless income limits to current and lower levels, may result in new projects needing more subsidies to avoid becoming a troubled project.

HUD Response: The HOME rents will not decline over the life of the project, so this action is not necessary.

Comment: HUD should adopt a hold-harmless policy geared to HOME projects, which will be harmed if the hold-harmless policy is eliminated. The commenter wrote that HUD should adopt a hold-harmless policy to ensure that HOME rental projects have adequate rental revenues, but still require the sponsors of these projects to target vacant units to those households that fall within the Section 8 income limits. Another commenter stated that thousands of affordable housing developments assisted through the HOME program would be immediately placed in financial jeopardy. HOME projects are contractually bound by long-term commitments to maintain rent at levels tied to the AMI. Nearly all HOME developments use the 65 percent of AMI standard to set maximum rents. Without the hold-harmless provision, stated the commenter, HOME properties face the prospect of shrinking rental income revenue whenever area median income estimates are reduced. Owners of HOME projects will find it impractical to operate such critical development projects with reduced rental income. This change will have a chilling effect on future participation in the program.

HUD Response: Rental income for HOME projects will not decline. HOME rents will be held harmless over the life of the project.

Comment: Because the impact of removing the hold-harmless policy is so broad, the policy should not be changed until potential problems for specific programs have been resolved. The programs affected by removing the hold-harmless policy include HOME, the Treasury Department's Tax-exempt Mortgage Revenue Bond program, the MTSPs not covered by the HERA-defined "HUD Hold-Harmless Impacted Projects" provisions, and the NSP established under both HERA and the American Recovery and Reinvestment Act of 2009. For the potential magnitude of the impact on various programs, the hold-harmless policy should not be changed until potential problems have been fully examined and resolved, one commenter stated. One commenter urged HUD to eliminate the hold-harmless policy only for Section 8 assistance and other direct rental subsidy programs or to postpone any decision to eliminate the hold-harmless policy until there has been more opportunity to consider and address its potentially negative consequences. Another commenter stated that HUD should have published how the proposed changes would affect actual jurisdictions, as it did on December 16, 2005, so that a more informed comment could be made. A 30 percent reduction in the AMI is not a modest decrease that will have a minimum impact on families. The commenter urged HUD to continue the hold-harmless provision for areas greatly impacted.

HUD Response: HUD has analyzed the impact of this change on the HOME program, the NSP program, the single-family mortgage credit program (Section 143 of the IRC), and the MTSPs not covered by HERA-defined "HUD Hold-Harmless Impacted Projects" provisions (and this includes the Tax Credit Program under Section 42 and Tax-Exempt Bonds program for multifamily units under Section 142), and discussed the impact throughout this notice. In short, project rents are protected from declines for the life of the project. Income eligibility for these programs can go down each year, but by no more than the maximum of 5 percent, or up by no more than 5 percent or twice the change in national median family income, whichever is greater. HUD provided a State-by-State listing of areas that are currently held harmless.

Comment: There are concerns about removing the hold-harmless policy at this particular time. The unusual macroeconomic conditions that currently prevail are likely to exacerbate problems for many housing programs in 2011, one commenter stated. If HUD continues to apply its current methodology, 2010 income limits will be based on the 2006–2008 ACS estimates, and the 2011 estimates will be based on the 2007–2009 ACS estimates. FY 2009 was an atypical year, combining a severe recession with a general deflationary trend. A weak Consumer Price Index (CPI) adjustment, combined with new income data from a recession year, will likely produce widespread declines in the next release of 3-year ACS estimates and, therefore, in 2011 income limits. As a result, removing the hold-harmless policy will produce large declines in 2011 income limits that will find many industry stakeholders unprepared, the commenter concluded.

HUD Response: For clarification, it should be noted that the CPI is only used to adjust the timing of the ACS data; update factors are not generated using CPI. The Census Bureau adjusts the 3-year data used in the FY 2010 income limits to 2008. It is assumed this is a midpoint of the year, so HUD adjusts the data using the CPI to make the income limit data represent the end of the year. The 3-year ACS data released in 2011 will likely show declines, since the impact of the recession in 2009 would be an important component of that data; however, HUD will be using 5-year data (2005–2009) for the FY 2011 income limits, so that the declines from 2009 will be mitigated. In addition, HUD will impose a cap of the maximum of 5 percent to limit reductions from year to year.

Comment: HOME Program income limits should be held harmless in order to maintain compatibility with MTSP program limits. On the issue of whether the hold-harmless policy should be maintained for HOME rents but discontinued for HOME eligibility requirements, HOME is often combined with MTSPs. Conflicting eligibility requirements between HOME and

MTSPs have a strong tendency to create confusion. HOME income limits, should be held harmless in order to maintain compatibility with MTSP income limits, stated a commenter.

HUD Response: Because of the special provisions in HERA for HUD Hold-Harmless Impacted Projects, HOME income limits will not be able to mimic the HERA Special MTSP income limits. For new projects, income limits will not be held harmless for either of these programs, so initially, they will be the same. Going forward, projects containing both HOME funds and MTSP financing will have to make a determination about how to evaluate eligibility for both incoming families and ongoing eligibility. These projects should consider specifying eligibility rules at the outset of the project.

V. Policy Decision

Accordingly, HUD will eliminate the hold-harmless policy in estimating Section 8 income limits. Decreases to the Section 8 income limits from FY 2010 forward will be limited to the maximum of 5 percent; increases will be limited to 5 percent or twice the change in national median family income increase or decrease, whichever is greater. This means, for example, that if the national estimate of median family income increased by 3 percent from the previous year, local income limits could change by up to 6 percent. The income limits for MTSPs will continue to follow the formulas set out in HERA. Specifically, HERA provides that area median gross income with respect to any project will be held harmless and not be less than the area median income for the preceding calendar year for which such determination is made. In addition, a different income limit determination formula specified by HERA for projects in areas held harmless in calendar years 2007 or 2008 applies if these limits would be higher than the limits calculated for MTSPs using HUD's regular methodology.[2] Rents used in the HOME program will continue to be held harmless, although the income limits used to determine eligibility for HOME projects may decrease up to the maximum of 5 percent or increase up to 5 percent or twice the change in national median family income, per year, whichever is greater. The income limits for Rural Housing Service programs will continue their current hold-harmless policy, based on different area definitions; these income limits are provided directly to the Department of Agriculture.

VI. Findings and Certifications

Environmental Review

This notice involves a discretionary establishment of income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance which does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 5019(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Dated: May 10, 2010.

Raphael W. Bostic,

Assistant Secretary for Policy Development and Research.

[FR Doc. 2010–11638 Filed 5–14–10; 8:45 am]

BILLING CODE 4210–67–P

[2] For a discussion of the special methodology, please see the FY 2009 MTSP Briefing Materials document available at *http://www.huduser.org/portal/datasets/mtsp/mtsp09/MTSP_Briefing.pdf.*

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–34]

Monthly Report of Excess Income and Annual Report of Uses of Excess Income

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Project owners are permitted to retain Excess Income for projects under terms and conditions established by HUD. Owners must request to retain some or all of their Excess Income. The request must be submitted through *http://www.pay.gov* at least 90 days before the beginning of each fiscal year, or 90 days before any other time during a fiscal year that the owner plans to begin retaining excess income for that fiscal year. HUD uses the information to ensure that required excess rents are remitted to the Department and/or retained by the owner.

DATES: *Comments Due Date:* June 16, 2010.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0086) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Monthly Report of Excess Income and Annual Report of Uses of Excess Income.

OMB Approval Number: 2502–0086.

Form Numbers: None—form HUD–93104 has been retired.

Description of the Need for the Information and its Proposed Use: Project owners are permitted to retain Excess Income for projects under terms and conditions established by HUD. Owners must submit a written request to retain some or all of their Excess Income. The request must be submitted at least 90 days before the beginning of each fiscal year, or 90 days before any other time during a fiscal year that the owner plans to begin retaining excess income for that fiscal year. HUD uses the information to ensure that required excess rents are remitted to the

Department and/or retained by the owner.

Frequency of Submission: Monthly, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,506	8,049		0.272		5,493

Total Estimated Burden Hours: 5,493.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 10, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–11637 Filed 5–14–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5376–N–35]

Web Survey of the Recipients of Section 108 Funds

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department of Housing and Urban Development (HUD) procured this evaluation in response to the Office of Management and Budget's (OMB) recent Program Assessment Rating Tool (PART review of the Section 108 program). This research will address OMB's concerns by providing suggestions for developing performance measures that focus on outcomes and meaningfully reflect the purpose of the program collects information on the activities, accomplishments and outcomes of Section 108 grantees and collects original information needed for the analysis of program overlap with other Federal programs. The survey will be sent to virtually all recipients that received Section 108 loans from HUD from FY 2002 through FY 2007.

DATES: *Comments Due Date: June 16, 2010.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2528-Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Leroy McKinney Jr., Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Leroy McKinney Jr. at *Leroy.McKinneyJr@hud.gov* or telephone (202) 402–5564. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. McKinney.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Web Survey of the Recipients of Section 108 Funds.

OMB Approval Number: 2528–Pending.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use: The Department of Housing and Urban Development (HUD) procured this evaluation in response to the Office of Management and Budget's (OMB) recent Program Assessment Rating Tool (PART review of the Section 108 program). This research will address OMB's concerns by providing suggestions for developing performance measures that focus on outcomes and meaningfully reflect the purpose of the program collects information on the activities, accomplishments and outcomes of Section 108 grantees and collects original information needed for the analysis of program overlap with other Federal programs. The survey will be sent to virtually all recipients that received Section 108 loans from HUD from FY 2002 through FY 2007.

Frequency of Submission: One Time Only.

Reporting Burden	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
	300	1		1.15		345

Total Estimated Burden Hours: 345.
Status: New collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 10, 2010.

Leroy McKinney, Jr.,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2010–11621 Filed 5–14–10; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

National Park Service

United States Park Police; 60–Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: United States Park Police, National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the United States Park Police (USPP) invites public comments on an extension of a currently approved collection of information of Office of Management and Budget (OMB) #1024–0245.

DATES: Public comments on this Information Collection Request (ICR) will be accepted on or before July 16, 2010.

ADDRESSES: Send comments to: Lt. Steve L. Booker, Human Resources Unit, United States Park Police, 1100 Ohio Drive, SW., Washington, DC 20020; or via fax at 202–619–7388 or via e-mail at *steve_booker@nps.gov.* All responses to the Notice will be summarized and included in the request for the Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

To Request a Draft of Proposed Collection of Information Contact: Lt. Steve L. Booker, Human Resources Unit, United States Park Police, 1100 Ohio Drive, SW., Washington, DC 20020; or via fax at 202–619–7388 or via e-mail at *steve_booker@nps.gov.* You are entitled to a copy of the entire ICR package free of charge once the package is submitted to OMB for review.

SUPPLEMENTARY INFORMATION:

Title: United States Park Police Personal History Statement.

Form(s): None.

OMB Control Number: 1024–0245.

Expiration Date: 10/30/10.

Type of Request: Extension of a currently approved collection of information.

Description of Need: The information provided in the personal history statement will be used in the investigation into backgrounds to assist in determining applicants' qualifications for the position of police officer. The authority to collect information is derived from one or more of the following: Title 5, Code of Federal Regulations, section 5.2; Title 4, United States Code, sections 1303, 1304, 1304, and 3301; sections 8(b), 8(c), and 9(c) of Executive Order 10450; Title 42, United States Code, section 2455; and Title 22, United States Code, sections 1434 and 2585. The information supplied will be used principally as a basis for an investigation to determine fitness for employment purposes, including a security clearance and an evaluation of qualifications, suitability, and loyalty to the United States. As part of such an investigation, the Standard Form 87 (Fingerprint Chart) will be sent to the Federal Bureau of Investigation and may be retained there. This information and information developed through investigation may be furnished to designated officers and employees of agencies and departments of the Federal Government for employment purposes, including security clearance determination, an access determination, an evaluation of qualifications, suitability, and loyalty to the U.S. Government, and a determination regarding qualifications or suitability for performing a contractual service to the Federal Government. The information may also be disclosed to any agency of the Federal Government having a working relationship with regard to Office of Personnel Management activities, to the intelligence agencies of the Federal Government, or to others having reasons as published in the **Federal Register.**

Your response can be voluntary.

Automated Data Collection: Yes or No? It is anticipated that this personal history statement will be made available electronically during recruitment and vacancy announcement openings.

Description of Respondents: Candidates for employment as a police officer.

Estimated Average Number of Responses: 2,000 per year.

Frequency of Response: 1 per respondent.

Estimated Average Time Burden per Respondent: 1.5 hours.

Estimated Total Annual Reporting Burden: 3,000 hours.

Comments are invited on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 11, 2010.

Cartina A. Miller,

Information Collection Clearance Officer, National Park Service.

[FR Doc. 2010–11636 Filed 5–14–10; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection Activities: Comment Request for the Production Estimate, Quarterly Construction Sand and Gravel and Crushed and Broken Stone (3 Forms)

AGENCY: U.S. Geological Survey (USGS), Interior.

ACTION: Notice of an extension of an information collection (1028–0065).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR) for the extension of the currently approved paperwork requirements for the USGS *Production Estimate, Quarterly Construction Sand and Gravel and Crushed and Broken Stone.* This collection consists of three forms and this notice provides the public an opportunity to comment on the paperwork burden of this form. We 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.

DATES: You must submit comments on or before June 16, 2010.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB) Office

of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior via e-mail to *OIRA_DOCKET@omb.eop.gov* or fax at 202–395–5806; and identify your submission as 1028–0065. Please also submit a copy of your written comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Centre Avenue, Fort Collins, CO 80526–8118 (mail); 970–226–9230 (fax); or *pondsp@usgs.gov* (e-mail). Use OMB Control Number 1028–0065 in the subject line.

FOR FURTHER INFORMATION CONTACT: Scott F. Sibley at 703–648–4976 or by mail at U.S. Geological Survey, 989 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192.

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection is needed to provide data on mineral production for annual reports published by commodity for use by Government agencies, Congressional offices, educational institutions, research organizations, financial institutions, consulting firms, industry, academia, and the general public. This information will be published in the "Mineral Commodity Summaries," the first preliminary publication to furnish estimates covering the previous year's nonfuel mineral industry.

II. Data

OMB Control Number: 1028–0065.

Title: Production Estimate, Quarterly Construction Sand and Gravel and Crushed and Broken Stone.

Type of Request: Extension of a currently approved collection.

Respondent Obligation: Voluntary.

Frequency of Collection: Quarterly and Annually.

Affected Public: Businesses and State/local governments that produce industrial nonfuel minerals.

Estimated Number of Annual Responses: 2,014.

Annual Burden Hours: 470 hours. We expect to receive 2,014 annual responses. We estimate an average of 10–15 minutes per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have not identified any "non-hour cost" burdens associated with this collection of information.

III. Request for Comments

On October 9, 2009, we published a **Federal Register** notice (74 FR 52254) announcing that we would submit this ICR to OMB for approval and solicit comments. The comment period closed on December 9, 2009. We did not receive any comments in response to that notice.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at anytime. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

USGS Information Collection Clearance Officer: Phadrea Ponds, 970–226–9445.

Dated: May 11, 2010.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team, U.S. Geological Survey.

FR Doc. 2010–11617 Filed 5–14–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Geological Survey

Agency Information Collection Activities: State Water Resources Research Institute Program Annual Application and Reporting

AGENCY: United States Geological Survey (USGS), Interior.

ACTION: Notice of a new collection.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to the Office of Management and Budget (OMB) an information collection request (ICR). This notice provides the public an opportunity to comment on the paperwork burden of this collection. We 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.

DATES: You must submit comments on or before June 16, 2010.

ADDRESSES: Please submit written comments on this information collection directly to the Office of Management and Budget (OMB) Office of Information and Regulatory Affairs, *Attention:* Desk Officer for the Department of the Interior via e-mail to *OIRA_DOCKET@omb.eop.gov* or fax at 202–395–5806; and identify your submission as 1028–NEW. Please also submit a copy of your written comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Centre Avenue, Fort Collins, CO 80526–8118 (mail); 970–226–9230 (fax); or *pondsp@usgs.gov* (e-mail). Use OMB Control Number 1028–NEW in the subject line.

FOR FURTHER INFORMATION CONTACT: John E. Schefter, Chief, Office of External Research, U.S. Geological Survey, 12201 Sunrise Valley Drive, MS 424, Reston, Virginia 20192 (mail) at (703) 648–6800 (Phone); or *schefter@usgs.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Water Resources Research Act of 1984, as amended (42 U.S.C. 10301 *et seq.*), authorizes a water resources research institute or center in each of the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and American Samoa. There are currently 54 such institutes, one in each state, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam. The institute in Guam is a regional institute serving Guam, the Federated States of Micronesia, and the Commonwealth of the Northern Mariana Islands. Each of the 54 institutes submits an annual application for an allotment grant and provides an annual report on its activities under the grant. The State Water Resources Research Institute Program issues an annual call for applications from the institutes to support plans to promote research, training, information dissemination, and other activities meeting the needs of the States and Nation. The program also encourages regional cooperation among institutes in research into areas of water management, development, and conservation that have a regional or national character. The U.S. Geological Survey has been designated as the administrator of the provisions of the Act.

II. Data

OMB Control Number: None. This is a new collection.

Title: State Water Resources Research Institute Program Annual Application and Reporting.

Type of Request: New.

Affected Public: The state water resources research institutes authorized by the Water Resources Research Act of 1983, as amended, and listed at *http://water.usgs.gov/wrri/institutes.html.*

Respondent's Obligation: Required to obtain benefits.

Frequency of Collection: Annually.

Estimated Number of Annual Respondents: We expect to receive 54 applications and award 54 grants per year.

Estimated Annual Total Responses: 54.

Estimated Time per Response: 160 hours. This includes 80 hours per applicant to prepare and submit the annual application; and 80 hours (total) per grantee to complete the annual reports.

Annual Burden Hours: 8,640.

III. Request for Comments

On December 29, 2009, we published a **Federal Register** notice (74 FR 68860) announcing that we would submit this ICR to OMB for approval and soliciting comments. The comment period closed on March 1, 2010. We did not receive any comments in response to that notice.

We again invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at anytime. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 10, 2010.

John E. Schefter,

Water Resources Research Act Program Coordinator.

[FR Doc. 2010–11620 Filed 5–14–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2010–N052; 40136–1265–0000–S3]

J.N. "Ding" Darling National Wildlife Refuge, Lee County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: Draft comprehensive conservation plan and environmental assessment; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of a draft comprehensive conservation plan and environmental assessment (Draft CCP/EA) for J.N. "Ding" Darling National Wildlife Refuge (NWR) for public review and comment. In the Draft CCP/EA, we describe the alternative we propose to use to manage this refuge for the 15 years following approval of the final CCP.

DATES: To ensure consideration, we must receive your written comments by June 16, 2010.

ADDRESSES: You may obtain a copy of the Draft CCP/EA by contacting Ms. Cheri M. Ehrhardt, via U.S. mail at J.N. "Ding" Darling NWR, 1 Wildlife Drive, Sanibel, FL 33957, or via e-mail at *DingDarlingCCP@fws.gov.* Alternatively you may download the document from our Internet Site at *http://southeast.fws.gov/planning* under "Draft Documents." Submit comments on the Draft CCP/EA to the above postal address or e-mail address.

FOR FURTHER INFORMATION CONTACT: Ms. Cheri M. Ehrhardt, Natural Resource Planner, *telephone:* 321/861–2368; or Mr. Paul Tritaik, Refuge Manager, *telephone:* 239/472–1100.

SUPPLEMENTARY INFORMATION:

Introduction

With this notice, we continue the CCP process for J.N. "Ding" Darling NWR. We started the process through a notice in the **Federal Register** on June 27, 2007 (72 FR 35254), and extended the comment period in a notice in the **Federal Register** on April 2, 2008 (73 FR 17991). For more about the refuge, its purposes, and our CCP process, *please see* those notices.

Background

The CCP Process

The National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, requires us to develop a CCP for each national wildlife refuge. The purpose for developing a CCP is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife management, conservation, legal mandates, and our policies. In addition to outlining broad management direction on conserving wildlife and their habitats, CCPs identify wildlife-dependent recreational opportunities available to the public, including hunting, fishing, wildlife observation, wildlife photography, and environmental education and interpretation. We will review and update the CCP at least every 15 years in accordance with the Administration Act.

The 6,406.79-acre refuge supports hundreds of species of wildlife and plants, providing protection for 13 Federal-listed species and 49 State-listed species, as well as for migratory birds and native wildlife. It also supports habitat diversity through tropical hardwood forests, beaches, mangrove swamps, mixed wetland shrubs, salt marshes, open waters and seagrass beds, and lakes and canals. Comprising roughly half of Sanibel Island and most of Buck Key, the J.N. "Ding" Darling NWR provides key habitats supporting a variety of species in a highly developed landscape. The city of Sanibel, Lee County, Sanibel-Captiva Conservation Foundation, and the Service work together to continue conservation work on Sanibel Island, which is one of the top birding hot spots in the nation, with beautiful beaches, shelling, fishing, and wildlife. This partnership has resulted in land use planning to guide growth and development, ensuring that future generations will be able to enjoy the special ambience and quiet harmony that Sanibel Island offers.

The priority management issues facing this refuge are addressed in the Draft CCP/EA, including: (1) Increasing and changing human population, development of the landscape, recreational uses and demands, and associated impacts; (2) issues and impacts associated with water quality, water quantity, and timing of flows; (3) invasion and spread of exotic, invasive,

and nuisance species; (4) climate change impacts; (5) need for long-term protection of important resources; (6) declines in and threats to rare, threatened, and endangered species; (7) insufficient baseline wildlife and habitat data and lack of a comprehensive habitat management plan; and (8) insufficient resources to address refuge needs.

CCP Alternatives, Including Our Proposed Alternative

We developed four alternatives for managing the refuge and chose Alternative C as the proposed alternative. A full description of each alternative is in the Draft CCP/EA. We summarize each alternative below.

Alternative A (Current Management, No Action)

Alternative A would continue management activities and programs at levels similar to past management, providing a baseline for the comparison of the action alternatives. Funding and staffing levels would remain similar to current levels, and programs would follow the same direction, emphasis, and intensity as under current management. Working with partners, we would conduct several surveying and monitoring activities, providing information for a variety of birds; juvenile and baitfish populations; and key rare, threatened, and endangered species. Habitat management activities on the refuge would include an impounded wetland reconnection/mangrove restoration project, impoundment management, prescribed fire, fuel and fire-effect monitoring, exotic plant control, limited water quality monitoring, and limited ditch clearing. Further, we would work with the partners to address exotic, invasive, and nuisance animals; water quality, quantity, and timing of flows concerns; and climate change. We would continue to offer a robust visitor services program, facilitating fishing, wildlife observation, wildlife photography, and environmental education and interpretation, while continuing to use a concessionaire to help provide these opportunities. Management and use of the Wilderness Area would continue. We would work with numerous governmental agencies, non-governmental organizations, and other partners to foster and promote refuge management goals, including through existing management and cooperative agreements.

Alternative B (Native Wildlife and Habitat Diversity)

Alternative B would expand or initiate our management activities, with a focus on native wildlife and habitat diversity, providing a new focus for refuge management actions, decisions, and priorities. Increased surveying and monitoring activities and increased water management capabilities for the impoundments, the Bailey Tract, and the State Botanical Site would better serve a variety of species. Habitat management and restoration activities would better provide for a mix of native species. Control of exotic, invasive, and nuisance plants and animals would be expanded. Benefitting numerous species and habitats of management concern, we would expand activities to better coordinate with the partners to address water quality, quantity, and timing of flows related to Lake Okeechobee regulatory releases, drainage in the Caloosahatchee Basin, local runoff issues, water quality in Tarpon Bay and on the refuge, and operation of the city of Sanibel's weir. With a focus on native wildlife and habitat diversity, we would utilize the best available science and employ a strategic habitat conservation approach to anticipate wildlife and habitat adaptation tendencies and to target management actions to facilitate successful adaptation responses to the impacts of climate change. We would better protect the archaeological and historical resources of the refuge on Sanibel and Captiva Islands, including conducting a complete archaeological and historical resources survey and protecting in perpetuity the historically significant site of "Ding" Darling's fishing cabin off Captiva Island. We would complete the approved acquisition boundary; develop management agreements to protect key resources; and pursue additional special designations for the refuge, including Western Hemisphere Shorebird Reserve Network and RAMSAR Wetlands of International Importance. We would enhance our Wilderness Area program. Although we currently have a robust visitor services program, Alternative B would focus more on native wildlife and habitat diversity and the minimization of human impacts on these resources. In general, existing visitor uses would continue, including fishing, wildlife observation and photography, and environmental education and interpretation, while we would increase efforts to improve ethical behavior, expand and enhance education and outreach activities, and maintain the concession approach to facilitating visitor activities and experiences. To provide additional visitor opportunities, we would locate and develop an observation tower at the Bailey Tract. The Wildlife Drive would be evaluated for any needed changes. We would evaluate the need for and ability to provide parking at the Shell Mound Trail to address existing ad-hoc parking and Wildlife Drive congestion issues at this site. We would convert the temporary fee-funded law enforcement officer position to a permanent position and add five refuge-specific staff: Wildlife biologist, biological science technician, two law enforcement officers, and park ranger (Environmental Education/Outreach). Historically, a single commercial bait fisherman has operated on the refuge. In line with regional compatibility guidance and to limit the impacts from commercial fishing activities, we would phase out commercial bait fishing activities from the refuge during the life of the CCP.

Alternative C (Migratory Birds, Proposed Action)

Alternative C would expand management with a focus on the needs of migratory birds, providing direction for management actions, decisions, and priorities, and prioritizing migratory birds in all restoration plans. This alternative addresses the management needs of all birds covered under the Migratory Bird Treaty Act, including resident species of native birds that are found using the refuge year-round. Expanded and new surveying and monitoring activities, habitat management, and habitat restoration would benefit a variety of species, including rare, threatened, and endangered species, with an emphasis on migratory birds. Increased water management capabilities for the impoundments, the Bailey Tract, and the State Botanical Site would also benefit a variety of species, predominantly migratory birds. Control of exotic, invasive, and nuisance plants and animals would be expanded, with a focus on migratory birds. To benefit migratory birds while also serving numerous species and habitats of management concern, we would expand activities to better coordinate with the partners to address water quality, quantity, and timing of flows related to Lake Okeechobee regulatory releases, drainage in the Caloosahatchee Basin, local runoff issues, water quality in Tarpon Bay and on the refuge, and operation of the city of Sanibel's weir. We would work with partners to evaluate water quality impacts on algal blooms, bird usage, seagrasses, and fish populations in and around the refuge. With a focus on migratory birds, we

would utilize the best available science and employ a strategic habitat conservation approach to anticipate wildlife and habitat adaptation tendencies and to target management actions to facilitate successful adaptation responses to the impacts of climate change. We would better protect the archaeological and historical resources of the refuge on Sanibel and Captiva Islands, including conducting a complete archaeological and historical resources survey and protecting in perpetuity the historically significant site of "Ding" Darling's fishing cabin off Captiva Island. We would complete the approved acquisition boundary, with a focus on migratory birds; develop management agreements to protect key resources, including nesting and roosting areas; and pursue additional special designations for the refuge, including Western Hemisphere Shorebird Reserve Network and RAMSAR Wetlands of International Importance. We would enhance our Wilderness Area program. Although we currently have a robust visitor services program, Alternative C would focus more on migratory birds and the minimization of human impacts on these resources. In general, existing visitor uses would continue, including fishing, wildlife observation, wildlife photography, and environmental education and interpretation, while we would increase our efforts to improve ethical behavior, expand and enhance education and outreach activities, and maintain the concession approach to facilitating visitor activities and experiences. To provide additional visitor opportunities, we would locate and develop an observation tower at the Bailey Tract and a handicapped-accessible fishing pier at Smith Pond on the Bailey Tract. The Wildlife Drive would be evaluated for any needed changes. Further, we would evaluate the need for and ability to provide parking at the Shell Mound Trail to address existing ad-hoc parking and Wildlife Drive congestion issues at this site. We would convert the temporary fee-funded law enforcement officer position to a permanent position and would add five refuge-specific staff: Wildlife biologist, biological science technician, two law enforcement officers, and park ranger (Environmental Education/Outreach). Historically, a single commercial bait fisherman has operated on the refuge. In line with regional compatibility guidance and to limit the impacts from commercial fishing activities, we would phase out commercial bait fishing activities from the refuge during the life of the CCP.

Alternative D (Rare, Threatened, and Endangered Species)

Alternative D would focus on initiating and increasing management actions that promote the recovery of rare, threatened, and endangered species occurring within the refuge, providing a new direction for management actions, decisions, and priorities. Expanded and initiated surveying and monitoring efforts, habitat management, habitat restoration, and research would benefit a variety of species, with an emphasis on rare, threatened, and endangered species. Control of exotic, invasive, and nuisance plants and animals would be expanded under Alternative D, with a focus on high-priority habitats serving rare, threatened, and endangered species. To benefit rare, threatened, and endangered species while also serving numerous species and habitats of management concern, we would expand activities to better coordinate with partners to address water quality, quantity, and timing of flows related to Lake Okeechobee regulatory releases, drainage in the Caloosahatchee Basin, local runoff issues, water quality in Tarpon Bay and the refuge, and operation of the city of Sanibel's weir. We would work with partners to evaluate water quality impacts on algal blooms, bird usage, seagrasses, and fish populations in and around the refuge to better understand the impacts on rare, threatened, and endangered species. We would coordinate with researchers and the partners to understand the impacts of climate change on refuge resources with a focus on rare, threatened, and endangered species, fostering and conducting research as possible, establishing benchmarks, and adapting management. We would better protect the archaeological and historical resources of the refuge on Sanibel and Captiva Islands, including conducting a complete archaeological and historical resources survey and protecting in perpetuity of the historically significant site of "Ding" Darling's fishing cabin off Captiva Island. We would complete the approved acquisition boundary; develop management agreements to protect key resources; and pursue additional special designations for the refuge, including Western Hemisphere Shorebird Reserve Network and RAMSAR Wetlands of International Importance. In addition, we would expand our Wilderness Area program. Although we currently have a robust visitor services program, Alternative D would focus more on rare, threatened, and endangered species and the minimization of human impacts on these resources. In general, existing visitor uses would continue, including fishing, wildlife observation, wildlife photography, and environmental education and interpretation, while we would increase efforts to improve ethical behavior, expand and enhance education and outreach activities, and maintain the concession approach to facilitating visitor activities and experiences. To provide additional visitor opportunities, we would locate and develop an observation tower at the Bailey Tract. The Wildlife Drive would be evaluated for any needed changes. Further, we would evaluate the need for and ability to provide parking at the Shell Mound Trail to address existing ad-hoc parking and Wildlife Drive congestion issues at this site. To help accomplish the outlined actions, Alternative D would be similar to Alternatives B and C. We would convert the temporary fee-funded law enforcement officer position to a permanent position and would add five refuge-specific staff: Wildlife biologist, biological science technician, two law enforcement officers, and park ranger (Environmental Education/Outreach). Historically, a single commercial bait fisherman has operated on the refuge. In line with regional compatibility guidance and to limit the impacts from commercial fishing activities, we would phase out commercial bait fishing activities from the refuge during the life of the CCP.

Next Step

After the comment period ends, we will analyze the comments and address them.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: March 22, 2010.

Mark J. Musaus,

Acting Regional Director.

[FR Doc. 2010–11684 Filed 5–14–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Bison Brucellosis Remote Vaccination, Draft Environmental Impact Statement, Yellowstone National Park, WY

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Availability of the Draft Environmental Impact Statement for a Bison Brucellosis Remote Vaccination Program, Yellowstone National Park.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C., 4332(2)(C), the National Park Service announces the availability of the Bison Brucellosis Remote Vaccination Draft Environmental Impact Statement (EIS) for Yellowstone National Park.

This planning effort will result in a decision determining whether or not to implement remote delivery of a vaccine to free-ranging bison inside Yellowstone National Park. Three alternatives will be considered including no-action, hand and remote delivery vaccination of young non-pregnant bison, and hand and remote delivery vaccination of young and adult female bison. The no action alternative is to continue the currently authorized syringe vaccination of calves and yearlings periodically captured in pens at the Park boundary. The two remote delivery alternatives include the continuation of the hand delivery program described under no action. The difference between the two remote delivery alternatives is in the age category of bison being targeted for remote delivery. One of the remote delivery alternatives includes adult female bison. A preferred alternative has not been identified in the draft EIS. The final EIS will include a preferred alternative.

The NPS requests comments on the draft EIS from the public, Federal agencies, States agencies, local governments and Tribal governments.

DATES: The National Park Service will accept comments on the Draft Environmental Impact Statement from the public for 60 days after the date the Environmental Protection Agency publishes this Notice of Availability. No public meetings are scheduled at this time.

ADDRESSES: Copies of the draft EIS will be available on the Internet at *http://parkplanning.nps.gov/yell* and at the Yellowstone Center for Resources, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190–0168 (307) 344–2203.

FOR FURTHER INFORMATION CONTACT: Rick Wallen, Bison Ecology and Management Office, Yellowstone National Park, P.O. Box 168, Yellowstone National Park, Wyoming 82190, (307) 344–2213, *YELL_Remote_Vaccine@nps.gov.*

SUPPLEMENTARY INFORMATION: The National Park Service agreed in the 2000 Record of Decision for the Interagency Bison Management Plan to evaluate an in-park, remote delivery vaccination program for bison. The purpose of remote delivery vaccination is to deliver a low risk, effective vaccine to eligible bison inside the park to (1) decrease the probability of bison shedding *Brucella abortus,* (2) lower the brucellosis infection rate, and (3) increase tolerance for bison on essential winter ranges in Montana.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the Bison Ecology and Management Office, Center for Resources, P.O. Box 168, Yellowstone National Park, Wyoming 82190. You may also comment via the Internet at *http://parkplanning.nps.gov/yell.* Finally, you may hand-deliver comments to the Center for Resources at 27 Officer's Row in Yellowstone National Park, Wyoming. Comments will not be accepted by facsimile, electronic mail, or methods other than those specified above. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 12, 2010.

Mary Gibson Scott,

Acting Regional Director, Intermountain Region, National Park Service.

[FR Doc. 2010–11640 Filed 5–14–10; 8:45 am]

BILLING CODE 4312–CT–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORC00000.L58820000.AL0000. LXRSCC990000.252W; HAG 10–0257]

Meeting for the Coos Bay District Resource Advisory Committee

AGENCY: Bureau of Land Management, Interior.

ACTION: Meeting Notice for the Coos Bay District Resource Advisory Committee.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) Coos Bay District Resource Advisory Committee (CBDRAC) will meet as indicated below:

DATES: The CBDRAC meeting will begin at 9 a.m. PDT on May 27, 2010.

ADDRESSES: The CBDRAC will meet at the Coos Bay BLM District Office, 1300 Airport Lane, North Bend, Oregon 97459.

FOR FURTHER INFORMATION CONTACT: Glenn Harkleroad, Assistant Field Manager, 1300 Airport Lane, North Bend, OR 97459, (541) 751–4361, or e-mail *glenn_harkleroad@blm.gov.*

SUPPLEMENTARY INFORMATION: The meeting agenda includes new member orientation, election of officers, and other matters as may reasonably come before the council. The public is welcome to attend all portions of the meeting and may make oral comments to the Council at 10 a.m. on May 27, 2010. Those who verbally address the CBDRAC are asked to provide a *written* statement of their comments or presentation. Unless otherwise approved by the CBDRAC Chair, the public comment period will last no longer than 15 minutes, and each speaker may address the CBDRAC for a maximum of five minutes. If reasonable accommodation is required, please contact the BLM's Coos Bay District at (541) 756–0100 as soon as possible.

Dated: May 10, 2010.

Mark E. Johnson,

District Manager, Coos Bay District Office.

[FR Doc. 2010–11626 Filed 5–14–10; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAN01000.L10200000.XZ0000]

Notice of Public Meeting: Northwest California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Northwest California Resource

Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, July 15–16, 2010, in Redding, California. On July 15, the RAC convenes at 10 a.m. at the Oxford Suites, 1967 Hilltop Drive, and departs immediately for a field tour. On July 16, the RAC convenes at 8 a.m. in the conference center at the Oxford Suites. Time for public comment has been reserved for 11 a.m.

FOR FURTHER INFORMATION CONTACT: Nancy Haug, BLM Northern California District manager, (530) 221–1743; or BLM Public Affairs Officer Joseph J. Fontana, (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northwest California. At this meeting agenda topics include discussion of access to Cow Mountain, a report on salmon recovery work on public lands, an overview of forest practices, an update on a wind energy proposal for Walker Ridge and an update on management of the Sacramento River Bend area. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Members of the public are welcome on field tours, but they must provide their own transportation and meals. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: May 6, 2010.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 2010–11635 Filed 5–14–10; 8:45 am]

BILLING CODE 4310–40–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–10–015]

Government In The Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 21, 2010 at 11 a.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436, *Telephone:* (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–1047. (Review) (Ironing Tables and Certain Parts Thereof from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before June 4, 2010.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 13, 2010.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2010–11892 Filed 5–13–10; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on May 10, 2010, a proposed Consent Decree ("Decree") in *United States* v. *The Pep Boys—Manny, Moe & Jack, and Baja, Inc.*, Civil Action No. 10–cv–00745, was lodged with the United States District Court for the District of Columbia.

In this action the United States, on behalf of the U.S. Environmental Protection Agency ("U.S. EPA"), sought penalties and injunctive relief under the Clean Air Act ("CAA") against The Pep Boys—Manny, Moe & Jack, and Baja, Inc., for violations of the mobile source provisions of the CAA. The Complaint alleges that between 2004 and March 2009, Defendants imported all-terrain vehicles, motorcycles, and generators from the Peoples' Republic of China in violation of the emissions certification, warranty, and labeling requirements of Title II of the CAA, Sections 204, 205 and 213, 42 U.S.C. 7523, 7524, and 7547, and the regulations promulgated thereunder, pertaining to highway motorcycles, recreational vehicles, and nonroad engines. The Complaint alleges approximately 363,000 violations, involving approximately 241,000 vehicles and engines.

Under the proposed Consent Decree, the Defendants will pay a civil penalty, export (or destroy) certain equipment that was previously seized by U.S. Customs and Border Protection, implement future corporate compliance plans, offer an Extended Emission-Related Warranty and Repair Reimbursement Program free to consumers, and offset the alleged illegal emissions through various programs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *The Pep Boys—Manny, Moe & Jack, and Baja, Inc.*, Civil Action No. 10–cv–00745, (D.D.C.), D.J. Ref. 90–5–2–1–09240.

The Decree may be examined at U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA 19103. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $34 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by email or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2010–11666 Filed 5–14–10; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of the Consent Decree Under the Clean Water Act

Notice is hereby given that on May 3, 2010, a proposed Consent Decree in *United States* v. *Puerto Rico Aqueduct and Sewer Authority* ("PRASA"), Civil Action No. 3:10-cv-01365 (SEC) was lodged with the United States Court for the District of Puerto Rico.

The proposed Consent Decree resolves PRASA's violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.* (the "CWA") and the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.,* (the "SDWA"), and penalties and injunctive relief from PRASA. Specifically, the Consent Decree resolves PRASA's violations of the National Primary Drinking Water Regulations ("NPDWRs") set forth in Section 1412 of the SDWA, 42 U.S.C. 300g, and its implementing regulations, 40 CFR Part 141, as a result of its failure to comply with the Surface Water Treatment Rule ("SWTR"), at three Water Treatment Plants ("WTPs") owned and/or operated by PRASA. The Decree also resolves PRASA's violations for failing to comply with the CWA by discharging pollutants without a permit at 19 WTPs, in violation of Section 301(a) of the Act, 33 U.S.C. 1311(a), and/or failing to comply with the terms of National Pollutant Discharge Elimination System ("NPDES") permits issued to it by EPA pursuant to Section 402 of the Act, 33 U.S.C. 1342, for at least 102 WTPs owned and/or operated by PRASA.

Under the Consent Decree, PRASA will implement water treatment plant improvement projects over the next 15 years valued at $195 million. These projects are divided into three phases of short term, mid-term, and long term Capitol Improvement Projects to rectify the CWA violations at 126 WTPs owned and operated by PRASA. The Consent Decree requires such projects as installing dechlorination equipment, high level indicators and flow meters; relocating sampling points; and constructing new sludge treatment systems. 34 Sludge Treatment Systems will be built at WTPs that are currently discharging untreated sludge into local waterways. The Consent Decree also requires PRASA to conduct capacity evaluations of its sludge treatment systems at approximately 50 WTPs, train operators, institute Standard Operating Procedures, and implement an Integrated Preventive Maintenance Program, as well as perform other tasks to achieve compliance with the CWA. PRASA will also pay a civil penalty of $1,024,267 and perform a Supplemental Environmental Project valued at $2,540,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *PRASA,* civil action number 3:10–cv–01365 (SEC) (D.P.R.), DOJ Case No. 90–5–1–1–08385/2.

During the public comment period, the Consent Decree may be examined at the Office of the United States Attorney, District of Puerto Rico, Torre Chardon, Suite 1201, 350 Chardon Avenue, San Juan, Puerto Rico 00918. The Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.85 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 2010–11654 Filed 5–14–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Lesbian, Gay, Bisexual, Transgender, and Intersex Guidance Project

AGENCY: National Institute of Corrections, U.S. Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The National Institute of Corrections (NIC) is soliciting proposals from organizations, groups, or individuals to enter into a cooperative agreement for a 12-month project period. Work under this agreement will result in a policy guide for corrections practitioners charged with the care and custody of lesbian, gay, bisexual, transgender, and intersex (LGBTI) offenders. In addition to providing guidance in selected operational areas (see Goal 2 and Supplementary Information), the guide will provide: (1) A brief summary of the relevant case law, (2) a description of current terms and definitions relevant to the LGBTI population, including an acknowledgment that these terms evolve and change over time, and (3) a list of topics that should be addressed in initial and ongoing staff training. Informational resources, websites, and sources for additional support should accompany each of these three areas.

It is anticipated that the policy guide will be used by individuals from Federal, State, and local corrections agencies of all sizes and funding levels, including primarily correctional administrators, medical and mental health staff, and training coordinators. Consequently, the guide must provide sufficient rationale and background information where needed, be easy to understand and convenient to use, and provide resources for further study and followup.

Ultimately, the policy guide will allow users to determine best practices for their specific agency or facility; write policy, procedure, and post orders that will allow implementation and monitoring of these practices; and develop staff and offender training and orientation materials.

DATES: Applications must be received by 4 p.m. EDT on Friday, June 11, 2010.

ADDRESSES: Mailed applications must be sent to Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date.

Hand delivered applications should be brought to 500 First Street, NW., Washington, DC 20534. At the front desk, call (202)307–3106, extension 0 for pickup. Faxed applications will not be accepted. The only electronic applications (preferred) that will be accepted can be submitted via *http://www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this announcement can be downloaded from the NIC Web site at *http://www.nicic.gov.*

All technical or programmatic questions concerning this announcement should be directed to Dee Halley, Correctional Program Specialist, Research and Evaluation Division, National Institute of Corrections. She can be reached by calling 1–800–995–6423 extension 4–0374 or by e-mail at *dhalley@bop.gov.*

Project Goals: This project consists of five goals, and the recipient of the award under this cooperative agreement will complete each as follows:

Goal 1: Develop a work plan including major milestones, a description of NIC's role in the project, NIC review and approval points, and a project schedule. **Note 1:** The proposal should describe the major components

and tasks of the work plan. Subtasks will be developed as the project progresses. **Note 2:** The project schedule will be shown by quarters and reflect the number of months from the award date, as opposed to actual dates.

Goal 2: Obtain input from corrections practitioners, the medical and mental health community, and LGBTI advocates. This input should focus on, but not be limited to, problems experienced in managing LGBTI offenders, best practice, the areas for which guidance would be most helpful, and how the guide can be structured for convenient use. In addition to, or in conjunction with the input received under Goal 2, the guide might contain guidance on LGBTI identification and risk assessment, intake and routine search procedures, offender orientation, classification and housing procedures, ongoing monitoring and reclassification procedures, provision of medical and mental health services, and considerations for the investigative process, privacy issues, and the identification of policy and practice with unintended consequences that can negatively affect LGBTI offenders.

Goal 3: Provide for NIC's approval an overview of the guide to include anticipated, measurable short-term and intermediate user outcomes and brief descriptions of the format and structure, major components and their content, and any appendixes, forms, or additional information.

Goal 4: Develop and "test" the first draft of the guide. Included under this goal is the collection and assessment of feedback from potential users and the development of recommended changes for NIC approval.

Goal 5: Revise the guide as indicated and deliver a copy of the product that meets NIC's standards for acceptable submissions. For all awards in which a document will be a deliverable, the awardee must follow the Guidelines for Preparing and Submitting Manuscripts for Publication as found in the "General Guidelines for Cooperative Agreements," which will be included in the award package.

Document Preparation: Prior to the preparation of the final draft of any document or other media, the awardee must consult with NIC's Writer/Editor concerning the acceptable formats for manuscript submissions and the technical specifications for electronic media. All final documents and other media submitted for posting on the NIC Web site must meet the Federal government's requirement for accessibility (508 PDF or HTML file). The awardee must provide descriptive text interpreting all graphics, photos, graphs, and/or multimedia to be included with or distributed alongside the materials and must provide transcripts for all applicable audio/visual works.

Required Expertise: Applicant organizations and project teams should be able to demonstrate the capacity to accomplish all five project goals and have experience with and/or an understanding of correctional operations, LGBTI populations, and medical, mental health, and legal issues that will affect correctional policy and practice.

Application Requirements: The application should be concisely written, typed double-spaced and reference the NIC Opportunity Number and Title provided in this announcement. The program narrative text is to be limited to 25 double-spaced pages, exclusive of resumes and summaries of experience (do not submit full curriculum vitae). In addition to the program narrative, an application package must include OMB Standard Form 425, Application for Federal Assistance; a cover letter that identifies the audit agency responsible for the applicant's financial accounts as well as the audit period or fiscal year that the applicant operates under (*e.g.,* July 1 through June 30); and an outline of projected costs. The following additional forms must also be included: OMB Standard Form 424A, Budget Information—Non-Construction Programs; OMB Standard Form 424B, Assurances—Non-Construction Programs (all OMB Standard Forms are available at *http://www.grants.gov*); DOJ/FBOP/NIC Certification Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and the Drug-Free Workplace Requirements (available at *http://www.nicic.org/Downloads/PDF/certif-frm.pdf*.)

Authority: Public Law 93–415.

Funds Available and Budget Considerations: Up to $75,000 is available for this project, but preference will be given to applicants who provide the most efficient solutions in accomplishing the scope of work. Determination will be made based on best value to the Government, not necessarily the lowest bid. Funds may only be used for the activities that are directly related to the project. This project will be a collaborative venture with the NIC Research and Evaluation Division.

Eligibility of Applicants: An eligible applicant is any State or general unit of local government, private agency, educational institution, organization, individual or team with expertise in the described areas. Applicants must have demonstrated ability to implement a project of this size and scope.

Review Considerations: Applications received under this announcement will be subject to the NIC Review Process. The criteria for the evaluation of each application will be as follows:

Programmatic (40%)

Are all of the five project goals adequately discussed? Is there a clear statement of how each project goal will be accomplished, including major tasks that will lead to achieving the goal, the strategies to be employed, required staffing and other required resources? Are there any innovative approaches, techniques, or design aspects proposed that will enhance the project?

Organizational (35%)

Does the proposed project staff possess the skills, knowledge, and expertise necessary to complete the tasks and include all of the elements listed under the project goals and supplementary information? Does the applicant agency, institution, organization, individual or team have the organization capacity to achieve the five project goals? Are the proposed project management and staffing plans realistic and sufficient to complete the project within the nine-month timeframe?

Project Management/Administration (25%)

Does the applicant identify reasonable objectives, milestones, and measures to track progress? If consultants and/or partnerships are proposed, is there a reasonable justification for their inclusion in the project and a clear structure to ensure effective coordination? Is the proposed budget realistic, does it provide sufficient cost detail/narrative, and does it represent good value relative to the anticipated results?

Note: NIC will NOT award a cooperative agreement to an applicant who does not have a Dun and Bradstreet Database Universal Number (DUNS) and is not registered in the Central Contractor Registry (CCR).

A DUNS number can be received at no cost by calling the dedicated toll-free DUNS number request line at 1–800–333–0505 (if you are a sole proprietor, you would dial 1–866–705–5711 and select option 1).

Registration in the CCR can be done online at the CCR Web site: *http://www.ccr.gov.* A CCR Handbook and worksheet can also be reviewed at the Web site.

Number of Awards: One.

NIC Opportunity Number: 10PEI36. This number should appear as a

reference line in the cover letter, where indicated on Standard Form 424, and outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.602.

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 2010–11661 Filed 5–14–10; 8:45 am]

BILLING CODE 4410–36–P

DEPARTMENT OF LABOR

Comment Request for Information Collection for OMB Control No. 1205–0478: American Recovery and Reinvestment Act (ARRA) High Growth and Emerging Industries (HGEI) Grants, Extension With Revisions

AGENCY: Employment and Training Administration.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the collection of data for American Recovery and Reinvestment Act (ARRA) High Growth and Emerging Industries (HGEI) Grants, expiring on October 31, 2010. This notice utilizes standard clearance procedures in accordance with the Paperwork Reduction Act of 1995 and 5 CFR 1320.12. This information collection follows an emergency review that was conducted in accordance with the Paperwork Reduction Act of 1995 and 5 CFR 1320.13. The submission for OMB emergency review was approved on April 1, 2010. A copy of this ICR can be obtained from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAMain.*

A copy of the current proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before July 16, 2010.

ADDRESSES: Submit written comments to Dani Abdullah, Room N4643, Employment and Training Administration, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone number: 202–693–3949 (this is not a toll-free number). *Fax:* 202–693–3890. *E-mail: green.jobs@dol.gov.* Please reference OMB Control Number 1205–0478 in the subject line of the e-mail.

SUPPLEMENTARY INFORMATION:

I. Background: The American Recovery and Reinvestment Act of 2009 (The Recovery Act) was signed into law by President Obama on February 17, 2009. Among other funding directed to the Department of Labor, the Recovery Act provides $750 million for a program of competitive grants for worker training and placement in high growth and emerging industries, the American Recovery and Reinvestment Act (ARRA) High Growth and Emerging Industries (HGEI) grants. It is critical to record the impact of these Recovery Act resources, current information on participants in these grants, and the services provided to them. Therefore, to obtain comprehensive information on participants served by and services provided with Recovery Act resources, ETA proposes an extension with revisions of an information collection set for ARRA HGEI grantees.

II. Review Focus:

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

III. Current Actions:

Type of Review: Extension with revisions.

Title: American Recovery and Reinvestment Act (ARRA) High Growth and Emerging Industries (HGEI) Grants.

OMB Number: 1205–0478.

Affected Public: ARRA HGEI Grantees (includes grantees that provide training and non-training grant-funded services).

Form(s): ETA–9153.

Total Annual Respondents: 244.

Annual Frequency: Quarterly.

Total Annual Responses: 976.

Average Time per Response (Training Grantees): 262 Hours.

Average Time per Response (Non-training Grantees): 16 Hours.

Estimated Total Annual Burden Hours (Training Grantees): 159,296 Hours.

Estimated Total Annual Burden Hours (Non-Training Grantees): 5,888 Hours.

Total Annual Burden Cost for Respondents: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed: At Washington, DC this 7th day of May, 2010.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2010–11710 Filed 5–14–10; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Final Finding of No Significant Impact (FONSI) for Small Vertical Wind Turbine and Solar Installation at the Paul Simon Job Corps Center Located at 3348 South Kedzie Avenue, Chicago, IL 60623

AGENCY: Office of the Secretary (OSEC), Department of Labor.

ACTION: Notice of final finding of no significant impact.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC), in accordance with 29 CFR 11.11(d), gives final notice of the proposed construction of a small vertical axis wind turbine and solar cells at the Paul Simon Job Corps

Center, and that this project will not have a significant adverse impact on the environment. In accordance with 29 CFR 11.11(d) and 40 CFR 1501.4(e)(2), a preliminary Environmental Assessment was presented through a public meeting held on 5/4/2010 at the Paul Simon Job Corps Center. No comments were received regarding the Environmental Assessment (EA). OSEC has reviewed the conclusion of the EA, and agrees with the finding of no significant impact. This notice serves as the Final Finding of No Significant Impact (FONSI) for Small Vertical Wind Turbine and Solar Installation at the Paul Simon Job Corps Center located at 3348 South Kedzie Avenue, Chicago, IL 60623. The preliminary EA are adopted in final with no change.

Dated: May 10, 2010.

Edna Primrose,

National Director of Job Corps.

[FR Doc. 2010–11662 Filed 5–14–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Availability of Funds and Solicitation for Grant Applications (SGA) to Fund Demonstration Projects

AGENCY: Employment and Training Administration, U.S. Department of Labor.

Announcement Type: New, Notice of Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA/DFA PY 09–10.

Catalog of Federal Assistance Number: 17.261.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces the availability of $12.2 million from funds made available through the FY 2010 DOL budget for Training and Employment Services for grants to State Workforce Agencies (SWA) to develop the Workforce Data Quality Initiative (WDQI). Grants awarded will provide SWAs the opportunity to develop and use State workforce longitudinal administrative data systems. These State longitudinal data systems will, at a minimum, include information on programs that provide training, employment services, and unemployment insurance and will be linked longitudinally at the individual level to allow for analysis which will lead to enhanced opportunity for program evaluation and lead to better information for customers and stakeholders of the workforce system. Where such longitudinal systems do not exist or are incipient, WDQI grant assistance may be used to design and develop workforce data systems that are longitudinal and which are designed to link with relevant education data or longitudinal education data systems. WDQI grant assistance may also be used to improve upon and more effectively use existing State longitudinal systems.

This solicitation provides background information on workforce longitudinal database systems, describes the application submission requirements, outlines the process that eligible entities must use to apply for funds covered by this solicitation, and details how grantees will be selected.

DATES: Key Dates: The closing date for receipt of applications under this announcement is August 16, 2010. Applications must be received at the address below no later than 4 p.m. (Eastern Time). Application and submission information is explained in detail in Section IV of this SGA. A pre-recorded Webinar for prospective applicants will be online at: *http://www.workforce3one.org* and available for viewing on June 21, 2010, by 3 p.m. ET, and accessible any time after that date. Reviewing this Webinar is not mandatory but applicants are encouraged to take advantage of this resource to get questions answered.

ADDRESSES: Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Willie E. Harris, Grant Officer, Reference SGA/DFA PY 09–10, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210. Applications sent via facsimile (fax), telegram or e-mail will not be accepted. Information about applying online also can be found in Section IV.C of this document. Applicants are advised that mail delivery in the Washington, DC area may be delayed due to mail decontamination procedures. Hand-delivered proposals will be received at the above address.

SUPPLEMENTARY INFORMATION:

A. Grant Purpose

The WDQI will provide funding to selected SWAs to accomplish a combination of the following objectives:

i. Develop or improve State workforce longitudinal data systems. Workforce data are already reported by localities, States, and nationally so grantees will not be creating entirely new data collection systems. What will be new, however, is coordinating, or expanding/strengthening the coordination of these workforce data sources so individual-level records can be matched to one another across programs and over time.

ii. Enable workforce data to be matched with education data, to ultimately create longitudinal data systems with individual-level information from pre-kindergarten (pre-K) through post-secondary and into the workforce system to build capacity to measure outcomes while protecting individual privacy. For many years DOL has supported efforts to create workforce longitudinal administrative databases linked to data from other programs, including education data. The WDQI will greatly extend and expand this effort and complement the Statewide Longitudinal Data Systems (SLDS) grant program administered by the Department of Education (ED).

iii. Improve the quality and breadth of the data in workforce longitudinal data systems. It is important that data in the longitudinal systems are complete and accurate and include an array of performance information in order to enhance knowledge about the workforce system and the impact of State workforce development programs. Data collection systems might also be improved to strengthen data validity and to minimize the reporting burden on State agencies and training providers.

iv. Use longitudinal data to provide useful information about program operations and analyze the performance of education and training programs. Policymakers and practitioners can use this data analysis to make programmatic adjustments that improve the workforce system.

v. Provide user-friendly information to consumers to help them select the education and training programs that best suit their needs. For example, Washington State displays information about training program outcomes at *http://www.careerbridge.wa.gov,* allowing consumers to compare the performance of different training providers.

The relative prominence of each objective for a given State will primarily be determined by the State's "launch-point" for developing a workforce longitudinal data system that will ultimately be linkable to education data and will reflect high data quality standards while protecting individual privacy (*see* the Section I.A.5). Additional details on the "launch point" for States can be found in the section of this SGA in Section I.A.1.

B. Background

President Obama's FY 2010 Budget requested $15 million and the Congress

appropriated over $12 million for the development of workforce longitudinal data systems. Single-state applicants can qualify for up to $1 million in funding. Multi-state consortium applicants are eligible for a grant amount of up to $3 million (*see* Section III.A for more information on funding eligibility).

These funds will be made available through competitive WDQI grants administered by DOL in support of a parallel and much larger effort, the SLDS grants. The American Recovery and Reinvestment Act (Recovery Act) appropriated $245 million to ED to support statewide (or in some cases, multi-State consortia) longitudinal education data systems with data on individuals participating in pre-K through grade 12 as well as post-secondary education and the workforce. The grant instructions for ED's SLDS program expressly include provisions to capture the data on workforce participation of students before and after they leave education systems. A request for applications was issued by ED on July 24, 2009, and applications were due December 4, 2009. The grants are scheduled to be awarded in May 2010.

Some innovative States already have shown the advantages of SWAs partnering with education and other entities to create comprehensive, longitudinal data systems. The State of Florida, for example, has developed a comprehensive system that links individuals' demographic information, high school transcripts, college transcripts, quarterly unemployment insurance (UI) wage data, and workforce services data. Such data systems can provide valuable information to consumers, practitioners, policymakers, and researchers about the performance of education and workforce development programs.

As with the above section and for the remainder of this document, reference to the databases being created under the WDQI may be called "workforce longitudinal administrative databases" or "workforce longitudinal databases" interchangeably.

C. Classification of Workforce System Data

Workforce system administrative data are collected as part of the operations of a variety of programs administered at the State and local level. These programs provide employment and training services, pay UI benefits to unemployed workers, and collect employer-paid UI payroll taxes that pay for UI benefits. The employment and training data come from a number of large and small workforce programs that provide employment and/or training services to employed and unemployed workers. Information is available for each service that is provided to each worker by each program. Below are examples of the most common types of workforce data.

i. *Wage Records:* The UI administrative data come from State UI programs through regular employer reporting on contributions to the UI payroll tax system. An important source of data on the employment and earnings of American workers comes from these UI wage record reports that are derived from the tax forms on covered establishments' wage and salary employment filed quarterly by employers. UI wage record reports include: The number of workers, worker names, Social Security numbers, earnings, and employers' industry codes and locations. UI wage records are comprehensive, as over 90 percent of wage and salary employment is in covered establishments. Data are also available for civilian and military Federal employees, but not for the self-employed.

ii. *Employment and Training Services:* Each of the workforce system programs provides employment and/or training services to unemployed, underemployed or employed individuals. Some programs also provide services to new entrants to the labor market (with the exception of the UI program). Data on types of employment and training services received, such as self-service and informational activities, prevocational services, and specific training services, are available from a number of workforce programs including those authorized under the Workforce Investment Act of 1998 (WIA), the Wagner-Peyser Act, from the Trade Adjustment Assistance program, the Registered Apprenticeship program and other workforce programs. Transaction information is available for each service (*e.g.,* training receipt, job referral, job search assistance) that is provided to participants in each program, together with their personal characteristics and other demographic information. Not only is information provided on participation numbers for employment services and training programs, information includes employment status, pre-program earnings, occupation of employment, and education participation or completion levels of individuals.

iii. *Unemployment Insurance Benefits:* The UI program also collects data on applicants for and recipients of UI benefits, including the number of persons that apply for UI benefits, the number that collect benefits, and the amount of benefits paid. Administrative data collected in the UI benefit claims process include worker demographic information such as age, former occupation and industry, in addition to residency information (including the street, city, State, and ZIP code).

iv. *The Federal Employment Data Exchange System (FEDES):* This data system provides States access to Federal civilian and military employment and earnings records maintained by the Office of Personnel Management, the Department of Defense and the U.S. Postal Service.

Data for all of these programs can be linked for any worker because all of these programs collect the Social Security Number of the participating individual. Workforce data can determine whether individuals have been employed, what their earnings and industry of employment are if they work, whether they become unemployed, whether they collect unemployment insurance upon unemployment, what employment services they receive from SWAs, and whether they use training services.

D. Workforce Longitudinal Administrative Data Systems That Are in Place or in Progress

From a recent survey conducted by the National Association of State Workforce Agencies (NASWA), DOL received information about the current extent of matching State education agency data with SWA data. The information was compiled from responses from the SWA research directors. Thirty-one responses were received from the 53 jurisdictions that have UI programs. These results are supported by recent data gathered through Carl D. Perkins Act accountability reporting which found that 31 States use UI wage records to determine employment after leaving post-secondary education.

DOL also has supplementary information on the development of workforce longitudinal databases from a consortium of nine States that currently maintain longitudinal administrative data. ETA has had a longstanding contractual relationship with this consortium of States to conduct workforce research, analysis, and evaluations. This group is called the Administrative Data Research and Evaluation Project (ADARE) alliance,[1] and the members are California, Florida, Georgia, Illinois, Maryland, Missouri,

[1] Administrative Data Research and Evaluation (ADARE) Alliance Web site. 2009. *http://www2.ubalt.edu/jfi/adare/.*

Ohio, Texas, and Washington. DOL has funded the ADARE project since 1998.[2] However, recently funds have not been available to support research and analysis to make full use of the linkage between longitudinal workforce and education data. Nonetheless, the ADARE partners have developed working relationships with State education or research entities (except for the Florida ADARE partner which is the State education agency).

These two sources of information (the NASWA survey and the ADARE States) indicate that the extent of data matching and development of longitudinal data systems varies:

i. About 20 States currently do not have their State workforce data arranged in longitudinal databases, nor do they match their workforce data with education data.

ii. Almost 20 States do conduct some workforce data matching with State educational data, but they do not have State workforce data collected and arranged longitudinally.

iii. About a dozen States have substantial State workforce longitudinal databases, and almost all of these databases have been linked to available State educational data (both longitudinal and non-longitudinal data sets). Most of these States are part of the ADARE consortium.

The goal of the WDQI is to substantially reduce this variation and build stronger longitudinal data systems through workforce data matching which can link to education data.

E. Existing State Examples of Workforce Longitudinal Data Systems

Altogether, about a dozen States (including the nine ADARE States) have developed substantial State workforce longitudinal data systems. Most of these States created these systems using State funds for a variety of applications, including tracking program performance, analyzing program activities and conducting research and analysis. A small number of these States have accumulated workforce and other longitudinal data for several decades.

As of 2009, nine States continued to participate in the ADARE alliance—California, Florida, Georgia, Illinois, Maryland, Missouri, Ohio, Texas and Washington. All but two—Florida and Washington—use a State research university to assemble, house, and analyze their data. In all cases, cooperative arrangements through memoranda of understanding and data-sharing agreements have been developed, to enable the State WIA, Wagner-Peyser Act, and unemployment insurance programs to share their workforce data as input to the workforce longitudinal administrative database.

In all cases, State agencies receive analyses and reports derived from the databases that can be used to understand and improve workforce programs. However, each State has initiated and operated its workforce longitudinal data system in a different manner.

WDQI applicants may be able to learn from the various approaches of the ADARE States. These ADARE models form a useful set of examples for any SWA considering applying for a WDQI grant. While innovation is encouraged, applicants should make full use of the existing knowledge and various models for building workforce longitudinal databases that have been developed in this field. Provided below is a brief description of four different State approaches that highlight successful workforce longitudinal databases models and applications of the information these databases provide.

1. *University-led Partnership to Manage Statewide Data-Sharing—Maryland:* In Maryland, the research component of longitudinal data-sharing was prioritized at the outset of the partnership between the Jacob France Institute of the University of Maryland-Baltimore County and the Maryland SWA, now the Maryland Department of Labor, Licensing and Regulation (DLLR). The Jacob France Institute has been authorized through data-sharing agreements with DLLR and various other State agencies to hold primary performance evaluation responsibilities for Maryland's WIA Title I–B (Adult, Dislocated Worker and Youth employment and training services), Title II (Adult Education and Literacy) and Title IV (Vocational Rehabilitation) programs, TANF High Performance Bonus Indicator Calculations, and core indicators of the Carl D. Perkins Act secondary and post-secondary adult vocational education and training services. As the steward of this performance reporting system, the Jacob France Institute has formed partnerships with the Governor's Workforce Investment Board, the Maryland Higher Education Commission, the Maryland State Department of Education, the Maryland Department of Business and Economic Development, the Maryland Department of Human Resources, the University System of Maryland, and locally with the Montgomery County Public Schools, the Baltimore City Public Schools, the Empower Baltimore Management Corporation, and individual community colleges.

In addition to statewide data-sharing, the Jacob France Institute has been awarded grant funds to develop multi-state longitudinal data-sharing systems among Delaware, the District of Columbia, New Jersey, Ohio, Pennsylvania, Virginia and West Virginia. This model of interstate data-sharing captures workforce and education data for individuals who are mobile in their pursuit of employment, training or education.

2. *University-led Partnership With Common Performance Management System—Illinois:* The longitudinal data system developed in Illinois is an example of a productive evolution of data-sharing among State agencies and educational institutions. In the mid-1980s the Center for Governmental Studies (Center) at Northern Illinois University connected with the Department of Commerce and Community Affairs (DCCA) and the Illinois Department of Employment Security (IDES) to link UI wage records to program participant records under the Job Training Partnership Act (JTPA). Less than a decade later, after having established themselves as an authority on linking administrative databases, the Center was awarded a grant to fund a project linking UI administrative data from multiple States.

Beginning in 1994, the Center undertook a project to develop and implement a common performance management framework which led to the Illinois Common Performance Management System (ICPMS) linking UI wage records with client data from JTPA workforce development programs, adult education, primary and secondary vocational education, and welfare-to-work. With the implementation of WIA, the Center began a project to expand its administrative database longitudinally to include historical archives of UI wage records which were easily accessible. The Center benefits from the partnership by gaining access to data which allows for in-depth research. Likewise, the Illinois workforce agencies benefit from being able to use the database and related research to improve system performance. The partnership is based on transparency and cooperation and has led to analysis of longitudinal data that has influenced frontline program management and public policy.

3. *Vendor Contracted Analysis of Longitudinal Data—Washington:* The Washington State longitudinal administrative database began as a DOL project in the late 1970s and early

[2] Stevens, David W. 2004. *Responsible Use of Administrative Records for Performance Accountability: Features of Successful Partnerships. http://www.ubalt.edu/jfi/adare/reports/ADAREcookbook504.pdf.*

1980s, but has been maintained and expanded by Washington State since that time. Today, Washington State provides an alternative model for developing statewide longitudinal administrative databases of workforce and education information. The State workforce investment board (the Washington State Workforce Training and Education Coordinating Board or WTECB) collects and maintains the longitudinal State workforce data, but has contracted with a private, non-profit research organization, the Upjohn Institute for Employment Research, to conduct analysis of the longitudinal administrative data.

The Upjohn Institute includes a number of labor economists doing applied research, frequently with large, longitudinal data sets. They have experience matching longitudinal data among States (Indiana, Georgia, Virginia, Washington and Ohio). By using a research organization, WTECB has been able to securely and effectively manage its commitment to accountability and performance monitoring. Through the Upjohn Institute, WTECB is able to track the outcomes of individuals in terms of achievement of workplace competencies, placement in employment, increases in levels of earned income, increased productivity, advancement out of services and overall satisfaction with program services and outcomes. In Washington State, there has been a focus on evaluating the returns on investment of the State workforce system in recent years.

Aside from using a research institution instead of a research university, Washington State is also unique because the SWA's high level of commitment to program evaluation through longitudinal data analysis is mirrored in the governor's office.

4. *State-led Education and Workforce Longitudinal Data System—Florida:* In 1971, State legislation designed to spur improved accountability in education resulted in creation of the Florida Statewide Assessment Program. This program was deliberately designed to collect a broad array of data on individuals moving through the educational system (kindergarten through post-secondary, undergraduate levels) for the express purpose of assessing student strengths and weaknesses to assist with education reform efforts. In the 1980s, the focus for data collection expanded to include career and technical education data [3], particularly at the post-secondary level. Since 1991, Florida State law has required community colleges and State universities to contribute their data to this data collection system.

The breadth of this data system relies upon a collaborative data collection and retention commitment from both the Office of Educational Accountability and Information Services and the Florida Agency for Workforce Innovation (FAWI). In addition to tracking student progress through career or technical education, university or community college, FAWI compiles information from workforce and social service programs that complements the education data. This information includes data from WIA programs, the Temporary Assistance for Needy Families (TANF) program, and the State UI and Employment Service programs.

Not only is Florida's longitudinal data system a unique example, but it also shows the diversity of partnerships formed in the creation of this data system. Through the Florida Education and Training Placement Information Program (FETPIP), agencies such as the Florida Department of Corrections, the Florida Department of Education, the U.S. Department of Defense, the U.S. Office of Personnel Management, the U.S. Postal Service, the Florida Department of Management Services, the Florida Agency for Workforce Innovation, Workforce Florida and numerous others have benefitted from information sharing or analysis of available data. The analysis from the Florida workforce longitudinal database has resulted in a detailed performance measurement system that goes far beyond the measures required by DOL or ED and has allowed for in-depth evaluation of State labor and education programs.

For more information about longitudinal data systems in other ADARE States, visit the Weblinks available in the first and second footnotes.

F. Selected Benefits and Uses of State Longitudinal Data Systems

State workforce longitudinal data systems can be used for a variety of purposes. DOL has primarily used the data to conduct evaluation and research. Most States have used these systems for measuring performance of workforce and educational programs, and generally to guide program operations and program development. Localities have been interested in how their school district or local One-Stop Career Centers are performing.

- In recent years, DOL funded two evaluations [4] of WIA programs to determine the effectiveness of the program and its components.
- In conjunction with welfare reform in the United States, DOL began administering grants for welfare-to-work programs. The ADARE alliance members came together to evaluate the welfare-to-work programs in six urban areas located in six of the ADARE States.[5]
- Washington State had a number of its State- and Federally-funded workforce programs evaluated by an outside research organization, by awarding this organization a contract and giving it access to their workforce longitudinal administrative data.[6]
- Currently, Maryland makes use of its longitudinal data system for a wide variety of purposes. A recent study followed the employment history of graduates from high schools in a single county, for seven years. It used UI wage record data from Maryland and surrounding States, as well as data on Federal civilian and military employees to conduct analysis.
- In 2008, a multi-state study [7] followed the flow of TANF leavers into the labor force, measuring their employment and earnings, determining whether and when they became unemployed and whether they collected unemployment insurance. Further research has extended the analysis to examine whether they received employment services and whether these

[3] *Florida Case Study: Building a Student-Level Longitudinal Data System.* The Data Quality Campaign, August 2006. *http://www.dataqualitycampaign.org/files/State_Specific-Florida_2006_Site_Visit.pdf.*

[4] Heinrich Carolyn J., Peter R. Mueser and Ken Troske. 2009. *Workforce Investment Act Non-Experimental Evaluation: Final Report.* Washington DC: U.S. Department of Labor. *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_resultDetails&pub_id=2419&mp=y.* Hollenbeck, Kevin, Daniel Schroeder, Christopher T. King, and Wei-Jung Huang. 2008. *Net Impact Estimates for Services Provided Through the Workforce Investment Act.* Washington, DC: U.S. Department of Labor. *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_resultDetails&pub_id=2367&mp=y.*

[5] King, Christopher T. and Peter R Mueser. 2005. *Welfare and Work: Experience in Six Cities.* Kalamazoo, MI: W. E. Upjohn Institute for Employment Research. *http://www.upjohninstitute.org/publications/titles/waw.html.*

[6] Hollenbeck, Kevin M. 2003. *Net Impact Estimates of the Workforce Development System in Washington State.* Upjohn Institute Staff Working Paper No. 03–92. *http://wdr.doleta.gov/research/keyword.cfm?fuseaction=dsp_resultDetails&pub_id=2367.*

[7] O'Leary, Christopher J., and Kenneth J. Kline. 2008. *UI as a Safety Net for Former TANF Recipients.* Washington, DC: Office of the Assistant Secretary for Planning and Evaluation, U.S. Department of Health and Human Services. *http://aspe.hhs.gov/hsp/08/UI-TANF/index.htm.*

services assisted these individuals in returning to work.

• In Texas, the Student Futures Project [8] has used their longitudinal administrative database to create a feedback system that has led to improvements in the direct-to-college enrollment rates from 54 percent to 62 percent between 2004 and 2009 in 10 participating local education districts. The project makes use of a number of secondary school administrative procedures (*e.g.,* encouraging completion of student aid applications in class, taking of SATs, increasing assistance with post-secondary school applications). It assesses progress using an administrative database consisting of local education and workforce data that are collected and analyzed by the Ray Marshall Center at the University of Texas.

The examples above show some of what can be done with State workforce longitudinal data systems. Many other uses are possible. For example, by developing these statewide or multi-state workforce longitudinal databases and linking them to comparable education databases, DOL, the States, and localities could more effectively: (1) Determine the employment outcomes for students (for secondary and post-secondary students alike), (2) identify education exit points that maximize employment and earnings of former students, (3) analyze the cost effectiveness of training programs in terms of increased earnings for individuals, (4) relate employment outcomes to training and education program funding, (5) illustrate the cost effectiveness of providing employment services programs by demonstrating whether there is a corresponding reduction in payment of UI and TANF benefits among individuals exiting the WIA and Wagner-Peyser programs, and (6) determine the impact of education achieved on the incidence of individuals participating in the UI program or the TANF program.

In the future, DOL is likely to fund projects focusing on program evaluation made possible through the development of these longitudinal workforce databases similar to the work of the ADARE States. As these databases are built, therefore, grantees should be prepared to address national research queries.

In addition, SWAs (or their data analysis partner) will be expected to use outside data resources to improve the breadth and depth of State or multi-state workforce analysis. The following are examples of potentially useful data sets that can either be directly incorporated into the workforce longitudinal data system or used in conjunction with findings generated through that data system:

i. *Local Area Unemployment Statistics program (LAUS)*—This is a Federal-State joint program providing monthly estimates of total employment and unemployment for areas including, census regions and divisions, States, some metropolitan areas, small labor market areas, counties and county equivalents and cities and towns of 25,000 people or more.

ii. *Quarterly Census of Employment and Wages (QCEW) file*—The Bureau of Labor Statistics (BLS) collects data on establishments reported by UI-covered employers, including information on industry, domain (public or private), geographic location *etc.,* which could add information on the type of employment held by individuals in addition to wage levels and duration of employment. The establishment level information in the QCEW database is protected by the Confidential Information Protection and Statistical Efficient Act (CIPSEA) and therefore may not be shared outside the cooperative statistical system. However, States have the capability of generating a version of this dataset that is not protected by CIPSEA. Further, BLS provides to the State cooperative statistical agency the linkages of establishments from quarter to quarter. Depending on State law and policy, the version of the establishment data not protected by CIPSEA and the quarter-to-quarter establishment linkages may be provided for use in the State longitudinal data system.

iii. *Business Employment Dynamics (BED)*—Is a set of statistics generated from the Quarterly Census of Employment and Wages, or ES–202, program. This data set is focused on employer data at the establishment level enabling BLS to track which firms are changing hands, ceasing to exist or acquiring additional resources. The BED file is built on the UI tax reports of each establishment which shows employment changes when companies form and fold. By showing quarterly gross job losses and gains (from 1992 onward) these data can highlight the dynamic changes occurring in the job market at a very local level or aggregated up to the State level.

iv. *Mass-Layoffs Statistics program (MLS)*—BLS uses the volume of unemployment claims reported by each establishment in the U.S. to determine monthly mass layoff numbers. These mass layoffs are charted by month and by quarter for regions and industries and can be an effective tool to show major job losses affecting the local or State workforce.

v. *Longitudinal Employer-Household Dynamics (LEHD)*—The U.S. Census Bureau uses modern statistical and computing techniques to combine Federal and State administrative data on employers and employees with core Census Bureau censuses and surveys while protecting the confidentiality of people and firms that provide the data. The LEHD research program is centered on the creation and empirical analysis of confidential, longitudinally linked employer-household micro-data for Federal and State administrative purposes as well as confidential Census Bureau surveys and censuses. The LEHD's Local Employment Dynamics (LED) is a voluntary partnership between State labor market information agencies and the U.S. Census Bureau. LED uses State UI Quarterly Census of Employment and Wage data micro-data provided by States. In many of the 47 participating States, longitudinal data reaches back nearly 20 years. The LED Internet-based tools include GIS mapping and localized workforce and industry reports.

vi. *Registered Apprenticeship (RA) Program Data*—An additional source of data on individuals who may not be represented in other workforce programs or in the education system is through the RA program. Applicants which may include data from RA programs should note that the DOL Office of Apprenticeship is the registration agency for RA programs in 25 States and the data for RA programs in these States are maintained in DOL's Registered Apprenticeship Partners Information Data System (RAPIDS). In the other 25 States, the District of Columbia, and U.S. Territories, the registration agency is a State Apprenticeship Agency (SAA) recognized by DOL that has responsibility for registering apprenticeship programs and maintaining apprenticeship data. In cases where successful applicants propose to include apprenticeship data that are maintained in DOL's RAPIDS, a MOU, letter of intent, data-sharing agreement, or other supporting materials legally binding the use of RAPIDS, are not required. DOL will work with these grantees to provide access to apprenticeship data. Applicants should

[8] King, Christopher T., Deanna Schexnayder, Greg Cumpton and Chandler Stolp. 2009. *Education and Work After High School: Recent Findings from the Central Texas Student Future Project.* Bureau of Business Research, IC2 Institute, the University of Texas at Austin. *http://centexstudentfutures.org/pubs/TBRAUG09.pdf.*

visit the DOL Office of Apprenticeship's Web site (*http://www.doleta.gov/oa/stateoffices.cfm* and *http://www.doleta.gov/oa/stateagencies.cfm*) to identify the Registration Agency appropriate for their State.

I. Funding Opportunity Description

This initiative will support development of these longitudinal databases over a three-year grant period. Applicants will be expected to clearly demonstrate their plans to build or expand these databases, store and use the data in adherence to all applicable confidentiality laws and to identify what types of analysis they will conduct with their data while protecting individual privacy for all data collected.

A. *Preparing to Apply for this Solicitation:* The following are important considerations for the development of State Workforce Longitudinal Administrative Data Systems (for more details, please *see* Section V further in this SGA).

1. Determining Capacity

In order for applicants for WDQI grants to submit plans to develop and fully implement workforce longitudinal data systems, they will have to identify their existing stage of development. Expectations for grantees will differ depending on their launch point, which will fall into one of three categories:

i. States without workforce longitudinal data systems are expected to: (1) Develop and fully implement their systems, (2) enable their new workforce systems to be linked to existing education longitudinal data systems, and (3) begin conducting basic analysis and research with their completed systems within the three-year grant period.

ii. States with partial systems are expected to: (1) Fully implement their systems, (2) enable linkages to existing education longitudinal data systems, and (3) conduct significant analysis and research with their completed systems that will be accessible to policymakers and practitioners.

iii. States with comprehensive workforce longitudinal systems are expected to: (1) Expand and extend their systems, (2) improve linkages with educational systems, (3) complete and publicize extensive longitudinal analysis and research with their systems, including developing prototype models of analysis that can be useful to other less advanced States, and (4) develop user-friendly platforms to show consumers performance data and analytical reports about education and workforce service providers.

2. Collection of Longitudinal Workforce Data

Applicants will be expected to explain the scope of the longitudinal data system which will be funded by this grant. Applicants will be asked to describe which programs will be included in the data system. At a minimum, the data systems should include disaggregated individual record data for the following programs: (1) WIA Title I, (2) Wagner-Peyser Act, (3) Trade Adjustment Assistance program data, (4) UI wage record data, (5) UI benefit data including demographic information associated with UI benefit payments, and (6) linkages to existing State education agency longitudinal data. Applicants are also encouraged to include data from other workforce programs such as Vocational Rehabilitation or RA programs. States will need to describe any State legislative barriers that impede the linking of data sources and address how such impediments will be overcome. It will also be incumbent upon SWA applicants to determine the source of all planned workforce data used to build the workforce longitudinal databases. This is particularly relevant in the case of the RA program as DOL is the registration agency and collects and houses the data for many of the State's RA programs.

Applicants should specify the planned data files—data records, elements, and fields—that will be contained in their workforce longitudinal data systems. Applicants should provide a detailed plan for designing, developing, storing and using the data as well as describe ongoing data-sharing and data storage procedures for both security and data quality purposes.

Applicants must also describe what procedures will be implemented to assure high standards of data quality as well as the protection of individual privacy. WDQI grantees are expected to be a focal point for data quality assurance and must therefore indicate what steps they will take to assure that workforce data and data received from partner agencies meets rigorous data quality standards.

3. Partnerships Among Agencies Within the State

Applicants will be expected to indicate which organizations will participate in the WDQI along with their authority and willingness to provide regular access to their data and to take an active role. Workforce data may be supplied by organizations within the SWA as well as from outside organizations. For example, UI wage records are kept by the State revenue agency in some States. The WIA program is also located outside the SWAs in some States. At a minimum, partnerships must be made with State education agencies, but cooperation is also encouraged with other State agencies, such as Vocational Rehabilitation or Apprenticeship agencies (in applicable States). Applicants should be prepared to describe potential legal or other barriers to data-sharing among partner agencies along with the strategies to overcome such barriers. Applicants should provide information about the firmness of the commitment of the partners in their efforts to assemble data.

Commitments should be demonstrated by submitting descriptions or evidence of planned or existing memoranda of understanding (MOU), letters of intent from partners, data-sharing agreements, or other supporting materials including legally binding agreements with partners.

4. Working With a Research Partner

The success of most ADARE States and other States (*e.g.,* Kentucky, New Jersey and Wisconsin) which have worked with a State research university for building, maintaining and using their workforce longitudinal data systems offers an approach that States may use. However, alternative approaches that would maintain confidentiality and result in high-quality data systems will be considered for funding as well.

Legislation in many States does not support data-sharing between the State workforce and education agencies. As a result, for some SWAs, an alternative data storing and/or data analysis intermediary may be necessary. Private and non-profit organizations with the capacity to safely house and manipulate large data sets in accordance with State and Federal confidentiality provisions could serve as partners. Many State research universities have the capacity to carry out the building of longitudinal administrative databases and are situated advantageously throughout the country and partnerships with a State research university are a proven model (please refer to Section B. above for further information).

When working with a State research university, applicants should investigate the additional security measures that may be expected by the Institutional Review Board (IRB) of that university. The IRB will have to give approval for the State research institution's involvement in this partnership that is based on its satisfaction that the plan for

confidential transfer, storage and usage of data is sound.

Alternative models will be considered under the WDQI grant programs and it will be critical that the following considerations are incorporated into any partnership model.

i. The research partner chosen by the SWA must have demonstrable capacity to assist in the collection and storage of the longitudinal workforce data.

ii. This research partner entity must be able to ensure that the data collected will be stored in accordance to local, State and Federal confidentiality provisions.

iii. This research partner will be responsible for processing data requests, conducting in-depth data analysis, preparing standard reports, responding to requests for additional papers and reporting on State and local workforce and education issues and trends as requested by external entities. It is expected, therefore, that the institution partnering with the SWA will have the capacity to fulfill these responsibilities.

5. Confidentiality

Applicants must describe the methods and procedures (*e.g.* through demonstrating existence of or plans to develop MOUs, letters of intent, and data-sharing agreements) for assuring the security and confidentiality of collection, storage and use of all data contained in the workforce longitudinal data system. Methods must describe how confidentiality in research, evaluation and performance management will be maintained. The responsibilities of the SWA and its partners should be enumerated and explained. Procedures for ensuring compliance with the State and Federal privacy and confidentiality statutes and regulations should be discussed, especially regarding the actual collection of data, data transmission, and the maintenance of computerized data files. Applicants should describe confidentiality procedures that will be used to protect personally identifiable information, including requirements for the reporting and publication of data. Applicants should describe under what circumstances the data will be made available, to whom and to what level of specificity in accordance with confidentiality laws.

The applicant should also include within their description of key types of personnel (*see* Section V.A.5 further in this SGA) reference to the level of confidentiality or access to data to which those employees will be held based on their employment status. For example, generally employees of State research universities are State employees, are therefore agents of the State workforce or education agencies and are granted access to or restricted from sensitive data based upon State laws. In addition, they are expected to observe rules set by the State university's IRB. It can be assumed, for the purpose of this application, that all proposed employees will be subject to Federal laws governing data-sharing, transfer of data and confidentiality.

6. Data-Sharing Agreements

It is to be expected that grantees in this initiative will have partnership agreements outlining the storage, use and ongoing maintenance of the longitudinal databases. These data-sharing agreements must address: How data will be exchanged between partners, the purposes for which the data will be used, how and when the data will be disseminated, which entity maintains control of the data, which entity actually owns the data, the intended methods of ensuring confidential collection, use and storage of the data, and which entities inside and outside of the data-sharing agreements will have access to the data. Data-sharing agreements should contain specific plans for secure data transfer and storage.

It may also be advantageous for grantees to develop data-sharing agreements with DOL to obtain individual level data for various programs for which the DOL is the data administrator. DOL encourages the production of full or limited scope public use data files that will be hosted by the SWA or an agreed upon designated host.

7. Integration of Efforts With State Education Agencies

SWAs are expected to assemble (or plan to assemble) and use longitudinal administrative data beyond only workforce data. It is important to connect workforce and education data to analyze individuals' receipt of both education and training services and to determine ways to maximize the outcomes of these services.

i. DOL encourages all SWAs which apply for WDQI grants to take their workforce longitudinal administrative database in whatever stage it may be in, develop it fully, and then enable the data to be matched with similar longitudinal education databases.

ii. SWAs with longitudinal administrative databases are encouraged to develop new approaches to link these databases with education entities collecting comparable education data as well as with other State agencies.

iii. SWAs which will be proposing to have their State workforce longitudinal data systems operated by a State university should assure that the State university staff will work closely with the State education agency as well as the SWA.

It is important to note that many of the statewide educational data systems supported by the ED are also in a State of development. On the education side there may be no longitudinal data systems in place, in which case, qualifying grantees would have to plan to link to available non-longitudinal education data, for example, individual-level post-secondary education data. If a State's education agency has a partially or fully developed statewide longitudinal education data system, it will be the responsibility of the workforce grantee to work with that agency to link the education and the workforce data. This is one example of the partnership that is expected between State workforce and education agencies in developing these linked longitudinal data systems.

Applicants must provide a description of the status of the development of the statewide longitudinal education data system in their State (*e.g.,* nothing in place, statewide longitudinal data system planned but not yet implemented, longitudinal data system partially developed or fully developed) but they will not be penalized for planning to incorporate education data which are not yet gathered longitudinally.

For those States where the education statewide longitudinal data system is incipient or undeveloped, DOL understands that it will take time to link education data into the State workforce longitudinal database in order to contribute to longitudinal analysis. The expectation is that these grantees will use these education data for analysis as soon as they have sufficient periods of longitudinal education data matched to the workforce data.

B. *Multi-State Partnerships:* Collaborative approaches will result in more complete data sets and efficient use of resources. DOL encourages States to partner in submitting applications and work together on developing workforce longitudinal databases. Applicants should explain their role relative to State partners in the "Plan Outline" and "Description of Partnership Strategies" sections of their application. Collaborations among or between States may take three forms:

i. *Multi-state data systems:* This is the most collaborative approach and may be the most efficient, because it allows States to share technology and

administrative resources. More than one State would contribute raw data into a merged matching system, maintained by the lead administrative agent, creating a multi-state workforce longitudinal data system. DOL strongly encourages this approach. The following points may be helpful in considering how to structure multi-state workforce longitudinal administrative databases:

• Look to States in close proximity whose educational capacity is robust (particularly in the case of a major State research university) in order to make assessments on which entities will be approached for a proposed partnership.

• Show figures on the interstate flow of residents through education pathways and beyond to demonstrate the usefulness of developing multi-state longitudinal databases.

• Outline the contribution of data and resources of the grant-seeking State to the multi-state longitudinal database system as it is developing or its contribution to a system already in existence.

• Anticipate what the role of this SWA will be in joining a collaborative that is either already in progress or getting underway.

ii. Individual State data systems operated by a single entity: States may not have the capacity to develop a workforce longitudinal data system on their own. They may lack appropriate staff at the SWA, State universities or other institutions to carry out this complex process. These States can still develop data systems through partnerships with a State education agency with sufficient capacity or with workforce agencies and/or research universities in other States. In such cases, two or more States would develop separate workforce longitudinal data systems at one SWA or research entity.

iii. Coordinated data-sharing and analysis: There are many urban labor markets that span State lines, presenting opportunities for innovative models in this initiative. States may choose to work alone in developing a longitudinal database, and yet still partner with agencies across State lines to share data for expanded analysis. In this case, applicants must demonstrate how they will ensure that the confidentiality provisions of each State will be adhered to.

II. Award Information

A. Award Amount

Approximately $12.2 million is available for awards under this solicitation. DOL reserves the right to award varying grant amounts depending on the quality of the applications received, the scope of the proposed activities, and the feasibility of the budget projections contained in the application; and also reserves the right to award additional grants depending on the availability of additional funds. Grant awards may be up to $1 million but must not exceed $1 million per grant for any single-state grantee. Grant awards may be up to $3 million per grant under a multi-state consortium model but are not to exceed $3 million. Applications requesting funds exceeding the amounts specified above will be found non-responsive and will not be considered.

B. Period of Performance

The period of grant performance will be up to 36 months from the date of execution of the grant documents. This performance period includes all necessary implementation and start-up activities. Applicants should plan to fully expend grant funds and submit all reports during the period of performance, while ensuring full transparency and accountability for all expenditures. Grants may be extended at no additional cost to the government with adequate justification and approval by the grant officer.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants are all SWAs. These SWAs include those within the 50 States, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. SWAs can apply for their individual State or they can work cooperatively with one or more SWAs in other States in a multi-state consortium or through a multi-state data-sharing agreement.

B. Cost Sharing

Cost sharing or matching funds are not required as a condition for application, but applicants should note that their plan for WDQI sustainability will be taken into account in the scoring under Section V.A.2 further in this SGA.

IV. Application and Submission Information

A. How to Obtain an Application Package

This SGA contains all of the information and links to forms needed to apply for grant funding.

B. Content and Form of Application Submission

The proposal will consist of three separate and distinct parts—(I) a cost proposal, (II) a technical proposal, and (III) attachments to the technical proposal. Applications that fail to adhere to the instructions in this section will be considered non-responsive and will not be considered. Please note that it is the applicant's responsibility to ensure that the funding amount requested is consistent across all parts and sub-parts of the application.

Part I. The Cost Proposal. The Cost Proposal must include the following four items:

• The Standard Form (SF)–424, "Application for Federal Assistance" (available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/grants/find_grants.cfm*). The SF–424 must clearly identify the applicant and be signed by an individual with authority to enter into a grant agreement. Upon confirmation of an award, the individual signing the SF–424 on behalf of the applicant shall be considered the authorized representative of the applicant.

• Applicants must supply their D–U–N–S® Number on the SF–424. All applicants for Federal grant and funding opportunities are required to have a Data Universal Numbering System (D–U–N–S® Number). *See* Office of Management and Budget (OMB) Notice of Final Policy Issuance, 68 FR 38402, Jun. 27, 2003. The D–U–N–S® Number is a non-indicative, nine-digit number assigned to each business location in the Duns & Bradstreet database having a unique, separate, and distinct operation, and is maintained solely by D–U–N–S® Number. The D–U–N–S® Number is used by industries and organizations around the world as a global standard for business identification and tracking. If you do not have a D–U–N–S® Number, you can get one for free through the Small Business Solutions site: *http://smallbusiness.dnb.com/webapp/wcs/stores/servlet/Glossary?fLink=glossary&footerflag=y&storeId=10001&indicator=7.*

• The SF–424A Budget Information Form (available at *http://www07.grants.gov/agencies/forms_repository_information.jsp* and *http://www.doleta.gov/grants/find_grants.cfm*). In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request, explained in detail below.

• *Budget Narrative:* The budget narrative must provide a description of costs associated with each line item on the SF–424A. It should also include leveraged resources provided to support grant activities. In addition, the applicant should address precisely how the administrative costs support the project goals. The entire Federal grant amount requested should be included

on both the SF–424 and SF–424A (not just one year). No leveraged resources should be shown on the SF–424 and SF–424A. Please note that applicants that fail to provide a SF–424, SF–424A, a D–U–N–S® Number, and a budget narrative will be removed from consideration prior to the technical review process.

• Applicants are also encouraged, but not required, to submit OMB Survey N. 1890–0014: Survey on Ensuring Equal Opportunity for Applicants, which can be found under the Grants.gov, Tips and Resources From Grantors, Department of Labor section at *http://www07.grants.gov/applicants/tips_resources_from_grantors.jsp#13* (also referred to as Faith Based EEO Survey PDF Form).

Part II. The Technical Proposal. The applicant will present the State's overall strategy for building workforce longitudinal databases with the capacity to link to longitudinal education databases and consists of six parts: (1) Statement of Current Longitudinal Database Capacity, (2) Plan Outline, (3) Description of Partnership Strategies, (4) Description of Database Design, Data Quality Assurance and Proposed Uses, (5) Staffing Capacity, and (6) Bonus Points—Other Data Linkages. Applicants will be evaluated on the completeness and quality of their submissions. A description of the criteria that will be used to evaluate each submission and points awarded are outlined in Section V of this SGA.

The Technical Proposal is limited to 30 double-spaced single-sided pages with 12 point text font and 1 inch margins. Any materials beyond these page limits will not be read. Applicants should number the Technical Proposal beginning with page number 1. Applicants that do not provide Part II, the Technical Proposal of the application will be removed from consideration prior to the technical review process.

Part III. Attachments to the Technical Proposal. In addition to the 30-page Technical Proposal, the applicant must submit an Abstract, not to exceed one page, summarizing the proposed project including applicant name, project title, a description of the area to be served, and the funding level requested. Consortium applications must also clearly specify the lead State, which is the State serving as the fiscal agent and as the administrative lead and identify each State that is participating in the project.

The applicant may supply evidence or descriptions of planned or existing MOUs, Letters of Intent or other statements attesting to the formation of data-sharing partnerships as attachments to the Technical Proposal. Detailed descriptions/qualifications for proposed staff positions to be included in the development of these workforce longitudinal databases may also be included as an attachment. Attachments may not exceed 35 pages Any materials beyond this page limit will not be read.

C. Submission Process, Date, Times, and Addresses

The closing date for receipt of applications under this announcement is August 16, 2010. Applications must be received at the address below no later than 4 p.m. (Eastern Time). Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications that do not meet the conditions set forth in this notice will not be honored. No exceptions to the mailing and delivery requirements set forth in this notice will be granted. Mailed applications must be addressed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Willie E. Harris, Grant Officer, Reference SGA/DFA, PY 09–10, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210. Applicants are advised that mail delivery in the Washington area may be delayed due to mail decontamination procedures. Hand-delivered proposals will be received at the above address. All professional overnight delivery service will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time.

Applicants may apply online through Grants.gov (*http://www.grants.gov*); however, due to the expected increase in system activity applicants are encouraged to use an alternate method to submit grant applications during this heightened period of demand. While not mandatory, DOL encourages the submission of applications through professional overnight delivery service.

Applications that are submitted through Grants.gov must be successfully submitted at *http://www.grants.gov* no later than 4 p.m. (Eastern Time) on the closing date, and then subsequently validated by Grants.gov. The submission and validation process is described in more detail below. The process can be complicated and time-consuming. Applicants are strongly advised to initiate the process as soon as possible and to plan for time to resolve technical problems if necessary.

It is strongly recommended that before the applicant begins to write the proposal, applicants should immediately initiate and complete the "Get Registered" registration steps at *http://www.grants.gov/applicants/get_registered.jsp.* These steps may take multiple days or weeks to complete, and this time should be factored into plans for electronic submission in order to avoid unexpected delays that could result in the rejection of an application. It is highly recommended that applicants use the "Organization Registration Checklist" at *http://www.grants.gov/assets/Organization_Steps_Complete_Registration.pdf* to ensure the registration process is complete.

Within two business days of application submission, Grants.gov will send the applicant two e-mail messages to provide the status of application progress through the system. The first e-mail, almost immediate, will confirm receipt of the application by Grants.gov. The second e-mail will indicate whether the application has been successfully validated or has been rejected due to errors. Only applications that have been successfully submitted by the deadline and subsequently successfully validated will be considered. While it is not required that an application be successfully validated before the deadline for submission, it is prudent to reserve time before the deadline in case it is necessary to resubmit an application that has not been successfully validated. Therefore, sufficient time should be allotted for submission (two business days), and if applicable, subsequent time to address errors and receive validation upon resubmission (an additional two business days for each ensuing submission). It is important to note that if sufficient time is not allotted and a rejection notice is received after the due date and time, the application will not be considered.

To ensure consideration, the components of the application must be saved as either .doc, .xls or .pdf files. If submitted in any other format, the applicant bears the risk that compatibility or other issues will prevent us from considering the application. DOL will attempt to open the document but will not take any additional measures in the event of problems with opening. In such cases, the non-conforming application will not be considered for funding.

Applicants are strongly advised to use the tools and documents, including FAQs, available on the "Applicant Resources" page at *http://www.grants.gov/applicants/app_help_reso.jsp#faqs.* To receive updated information about critical issues, new tips for users and other time sensitive updates as information is available, applicants may subscribe to Grants.gov Updates at:

http://www.grants.gov/applicants/email_subscription_signup.jsp.

If applicants encounter a problem with Grants.gov and do not find an answer in any of the other resources, call 1–800–518–4726 to speak to a Customer Support Representative or e-mail *support@grants.gov*.

Late Applications: For applications submitted on *Grants.gov*, only applications that have been successfully submitted no later than 4 p.m. (Eastern Time) on the closing date and subsequently successfully validated will be considered.

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made, it was properly addressed, and it was: (a) Sent by U.S. Postal Service mail, postmarked not later than the fifth calendar day before the date specified for receipt of applications (*e.g.,* an application required to be received by the 20th of the month must be postmarked by the 15th of that month), or (b) sent by professional overnight delivery service to the addressee not later than one working day before the date specified for receipt of applications. Applicants take a significant risk by waiting to the last day to submit by *grants.gov*. "Postmarked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the package. Failure to adhere to the above instructions will be a basis for a determination of non-responsiveness. Evidence of timely submission by a professional overnight delivery service must be demonstrated by equally reliable evidence created by the professional overnight delivery service provider indicating the time and place of receipt.

D. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

E. Funding Restrictions

Determinations of allowable costs will be made in accordance with the applicable Federal cost principles. Disallowed costs are those charges to a grant that the grantor agency or its representative determines not to be allowed in accordance with the applicable Federal cost principles or other conditions contained in the grant. Successful and unsuccessful applicants will not be entitled to reimbursement of pre-award costs.

1. Indirect Costs

As specified in OMB Circular Cost Principles, indirect costs are those that have been incurred for common or joint objectives and cannot be readily identified with a particular final cost objective. In order to use grant funds for indirect costs incurred, the applicant must obtain an Indirect Cost Rate Agreement with its Federal cognizant agency either before or shortly after grant award. State agencies should already have such agreements in place.

2. Administrative Costs

Under this SGA, an entity that receives a grant to carry out a project or program may not use more than 10 percent of the amount of the grant to pay administrative costs associated with the program or project. Administrative costs could be direct or indirect costs, and are defined at 20 CFR 667.220. Administrative costs do not need to be identified separately from program costs on the SF–424A Budget Information Form. They should be discussed in the budget narrative and tracked through the grantee's accounting system. To claim any administrative costs that are also indirect costs, the applicant must obtain an Indirect Cost Rate agreement from its Federal cognizant agency.

3. Salary and Bonus Limitations

Under Public Law 109–234, none of the funds appropriated in Public Law 109–149, or prior Acts under the heading "Employment and Training" that are available for expenditure on or after June 15, 2006, may be used by a recipient or sub-recipient of such funds to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II. Public Laws 111–8 and 111–117 contain the same limitations with respect to funds appropriated under each of those Laws. These limitations also apply to grants funded under this SGA. The salary and bonus limitation does not apply to vendors providing goods and services as defined in OMB Circular A–133 (codified at 29 CFR parts 96 and 99). *See* Training and Employment Guidance Letter number 5–06 for further clarification: *http://wdr.doleta.gov/directives/corr_doc.cfm?DCON=2262.*

4. Intellectual Property Rights

The Federal Government reserves a paid-up, nonexclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use for Federal purposes: (1) The copyright in all products developed under the grant, including a subgrant or contract under the grant or subgrant; and (2) any rights of copyright to which the grantee, subgrantee or a contractor purchases ownership under an award (including but not limited to curricula, training models, technical assistance products, and any related materials). Such uses include, but are not limited to, the right to modify and distribute such products worldwide by any means, electronically or otherwise. Federal funds may not be used to pay any royalty or licensing fee associated with such copyrighted material, although they may be used to pay costs for obtaining a copy which are limited to the developer/seller costs of copying and shipping. If revenues are generated through selling products developed with grant funds, including intellectual property, these revenues are program income. Program income is added to the grant and must be expended for allowable grant activities.

If applicable, the following statement must be included on all products developed in whole or in part with grant funds:

"This workforce solution was funded by a grant awarded by the U.S. Department of Labor's Employment and Training Administration. The solution was created by the grantee and does not necessarily reflect the official position of the U.S. Department of Labor. The Department of Labor makes no guarantees, warranties, or assurances of any kind, express or implied, with respect to such information, including any information on linked sites and including, but not limited to, accuracy of the information or its completeness, timeliness, usefulness, adequacy, continued availability, or ownership. This solution is copyrighted by the institution that created it. Internal use by an organization and/or personal use by an individual for non-commercial purposes is permissible. All other uses require the prior authorization of the copyright owner."

F. Other Submission Requirements

Withdrawal of Applications: Applications may be withdrawn by written notice at any time before an award is made.

V. Application Review Information

Criterion	Points
1. Statement of Current Capacity	10
2. Plan Outline	15
3. Description of Partnership Strategies	30
4. Description of Database Design, Data Quality Assurance and Proposed Uses	35
5. Staffing Capacity	10
6. Bonus Points—Other Data Linkages	3
Total Possible Points	103

A. Evaluation Criteria

This section identifies required application elements that will be used to evaluate proposals for the WDQI grants. The application requirements and maximum point values are described below. Please refer back to Section I.A of this SGA for more information on the components of the application requirements listed below. Please keep in mind that the Attachments to the Technical proposal may serve as space to include additional details on components such as the planned or existing MOUs, data-sharing agreements, letters of intent or job descriptions of key staff positions, however, a brief description of such must be included in the relevant sections below.

1. Statement of Current Capacity (10 Points)

Applicants must submit a Statement of Capacity (for more information, please refer back to Section I.1) that clearly outlines the applicant's launch point, which is the extent to which the SWA (or the lead research/data-sharing entity) has developed or plans to develop data-sharing partnerships, established or plans to establish longitudinal linkages among the different data sources, and produced or plans to produce useful analysis based on linked data. Proposals from applicants with new or partially developed data systems will be evaluated based on the thoroughness of their descriptions of the potential capacity existing in their States to create a longitudinal workforce data system based on the factors below. Applicants with planned or partially developed workforce longitudinal databases are encouraged to use this section to discuss the opportunities that exist in their State for formation of the longitudinal database. Scoring for this criterion will be based on the applicant's ability to clearly demonstrate the following:

i. The capacity for maintaining secure data storage, including any partnerships that have or will be established between the SWA and another entity capable of maintaining secure data storage, such as a research entity (State university or otherwise). Partnerships are demonstrable through MOUs, data-sharing agreements or other legally binding contracts. Descriptions of existing agreements or plans to enter into agreements may be submitted as an attachment to the application, subject to the page limitations stated in Section IV.B of this SGA.

ii. Any planned or established partnerships between the SWA and the State education agency that are demonstrable through planned or existing MOUs, data-sharing agreements or other legally binding contracts. Descriptions of these may be submitted as an attachment to the application, subject to the page limitations stated in Section IV.B of this SGA. Applicants with new or partially developed longitudinal workforce databases should provide a detailed description of the steps they plan to take to develop these partnerships.

iii. Any existing or planned data linkages for data sets such as (but not limited to) wage record data, employment and training services data, UI benefits data, TANF data, WIA, Wagner-Peyser and Trade Adjustment Assistance program data.

iv. The extent to which the existing or proposed data-sharing partnerships have yielded or will yield statistical analysis and/or reporting on the State workforce system to inform stakeholders such as employment services customers, educators, policy makers, service providers and elected officials. Applicants with new or partially developed longitudinal workforce databases may also describe the need to have such data available for research and analysis.

v. Any partnerships with agencies in neighboring States which have come about through a commitment to share data in an effort to gather information on individuals traveling over State lines in pursuit of education or employment. Partnerships are demonstrable through MOUs, data-sharing agreements, or other legally binding contracts. Applicants with new or partially developed longitudinal workforce databases should provide a detailed description of the steps they plan to take to develop these partnerships. Descriptions of these planned or existing agreements may be submitted as an attachment to the application, subject to the page limitation stated in Section IV.B of this SGA.

Responses to the criteria in this section establish the baseline status of each applicant. A thorough statement will give the applicant as well as the grant reviewers valuable insight into the true scope of the project design.

2. Plan Outline (15 Points)

Once an assessment of capacity is complete, it will be possible to make a plan for expanding or improving workforce longitudinal databases. It is important that the applicant integrate information about the current status of any existing longitudinal workforce database with the plan to proceed forward under this grant opportunity. For this section applicants should provide a complete, but brief overview since many of the same requirements listed below will be expanded upon in Sections V.A.3 through V.A.6. Scoring of this section will be based on of the ability of the applicant demonstrate a sound structural plan. The plan outline must:

i. Describe the State's objectives for creating or upgrading and using its workforce longitudinal data system and explain how the State plans to achieve these objectives. The appropriateness of the objectives and plans will be judged relative to the State's current data system capacity. Depending on the State's launch point, objectives should include a description of the plans for:

- Creating or expanding workforce longitudinal databases.
- Improving the quality of workforce data.
- Developing or expanding the capacity to match workforce and education data.
- Using data for analysis that will help policymakers and practitioners understand the performance of workforce and education programs.
- For applicants with a partially or fully developed workforce longitudinal database, creating user-friendly portals to publicize the data in ways that help

consumers choose between different education and training programs.

ii. Describe the status of the statewide longitudinal education data system in their State. Applicants will have to work with the State education agency to determine whether that State has begun to plan for their SLDS, has a partially developed or fully implemented SLDS program. The application should include a description of the SLDS plan and which sets of education data are part of the SLDS. If neither of these exist, the applicant must be prepared to indicate what education data sets (consistent with the requirements of Section V.A.4 in the SGA) they will incorporate into their workforce longitudinal data system until the State education agency is able to generate longitudinal education data to match with. (For basic information on the SLDS, *see* the following ED Web site: *http://nces.ed.gov/Programs/SLDS/* and the following Data Quality Campaign Web site: *http://www.dataqualitycampaign.org/*.)

iii. Specify whether the State is applying alone or as a member of a multi-state consortium or whether it plans to develop joint data-sharing or cooperative data analysis agreements with neighboring States.

• If applicants will be working with another State(s) to develop their workforce longitudinal database, the application must include: (1) Which States are part of the collaboration, (2) which State will take the lead role in developing the workforce longitudinal databases and which State(s) will be providing their workforce data, (3) how confidentiality will be protected in the case of multiple States in accordance with each State's confidentiality regulations, and (4) brief descriptions of any planned or existing legally binding agreements (*e.g.,* MOUs, data-sharing agreements) between/among the partner States which ensure that each State is aware of its role and the expectations of workload in the event that a grant is awarded.

• If applicants will be planning on sharing and/or using another State's longitudinal data to produce analysis on a shared labor market, the following must be included in the application: (1) A list of the State(s) involved in the data-sharing partnership, (2) a clear outline of which State will be providing data (in this case, both or all States may provide data) and which will be receiving data (again, both or all States may receive data in this role), (3) identification of which State will be the lead fiscal agent and the lead administrative agent, and (4) a brief description of any planned or existing legally binding agreements (*e.g.* MOUs, data-sharing agreements) between/among partner States that outline the expectations of the data-sharing and explaining in detail how confidentiality will be protected according to Federal and State laws.

iv. Explain plans for sustaining these workforce longitudinal databases beyond the three-year grant period. Applicants should consider how their planned or existing MOUs and Data-Sharing Agreements will be renewed with their partners to ensure continued maintenance and analysis of the longitudinal workforce data. Continued Federal funding cannot be guaranteed, so applicants are expected to research viable alternative funding sources and describe them in this section.

3. Description of Partnership Strategies (30 Points)

Applicants must describe their strategy to create, sustain, strengthen or expand partnerships and maintain working relationships within and outside the State workforce system. In each of these partner relationships, the SWA applicants are expected to document their proposed arrangements with State education agencies, which may include providing brief descriptions of existing or proposed MOUs, letters of support, and/or detailed plans for working relationships and shared responsibilities.

SWAs without the internal capacity to operate the longitudinal data system will need to partner with an external entity (such as a research university or a private or non-profit organization) to develop, maintain and use the longitudinal database, both operationally and for research purposes.

Multi-state applicants must demonstrate capacity to either establish or improve upon established partnerships that enable sharing workforce data with other States. In the case of a multi-state application, the lead fiscal agent/State should be the same as the lead administrative agent/State and must be identified along with a complete list of additional State partners. Multi-state applicants must also identify the partnerships among agencies/entities within each of the member States in response to the points listed below.

In all cases partnerships must be forged in gathering relevant workforce and education data. The applicant must clearly describe the existing or proposed partnerships and briefly describe the data that the partner will be providing for the initiative (for more details, please refer back to Section I.A of this SGA).

Note that States with a developed or partially developed workforce longitudinal database should focus on describing maintenance and expansion of partnerships, as a description of existing partnerships should have already been provided in the Statement of Current Capacity.

Scoring under this section will be based on the extent to which the applicant demonstrates an effective plan to execute or to expand the following:

i. Partnerships Within State Workforce Systems

The applying SWA must demonstrate capacity to either establish or improve arrangements for sharing workforce data.

ii. Partnerships With State Education Agencies

The applicant must demonstrate capacity to establish or maintain a relationship with the State education agency leading the SLDS initiative. Partnerships must be established that will create the capacity to link data between education and workforce databases to support longitudinal data analyses and to provide performance information from secondary and post-secondary training providers to the workforce system and consumers.

iii. Partnerships With Research Universities or Other Research Entities

If the applicant does not have internal capacity to develop or operate a longitudinal data system, it must demonstrate the ability to establish or further develop a relationship with the research entity (State university or otherwise) or other entities that will be/are engaged in the development of longitudinal data systems. Partnerships must be established/expanded that will ensure that the collection of longitudinal workforce data adheres to local, State and Federal confidentiality laws. Further, these partnerships must support the ongoing security and confidentiality of these databases for as long as they are in existence. This research university or other entity will be expected to conduct in-depth analysis of this longitudinal data and to produce standard reports and conduct specialized research projects and ongoing analysis.

iv. Partnerships With Additional State Agencies

This includes (but is not restricted to) agencies such as the State revenue department, in such instances where UI, WIA or other programs are administered in full or in part in such an agency or another agency outside of the SWA.

Moreover, it may be advantageous for SWAs to partner with State economic, human services or other agencies in the event that such a partnership may provide an opportunity to match individual level data to the workforce longitudinal database.

4. Description of Database Design, Data Quality Assurance and Proposed Uses (35 Points)

Applicants must provide the details of the existing or proposed database design and explain how the design will help achieve the applicant's objectives. States with a developed or partially developed workforce longitudinal database should describe the existing database design, confidentiality measures and data analysis, and provide a detailed description of the intended design of or expansions to data content and usage. Applicants will be scored under this section on the extent to which they are able to demonstrate the actual or intended use of the following elements:

i. Personal Identifier

Applicants must explain how the database will be developed or has been developed using the Social Security Number (SSN) as a unique personal identifier for individuals entering into the workforce system, in addition to jobseekers and employees already in the workforce system. The SSN is already in use throughout the workforce system and will allow States to gather this data longitudinally in order to accurately track movement into and out of workforce and education systems. Collection of the client's SSN is not required throughout the workforce system and may not be required as a condition of receiving workforce development services, and though it is nearly uniformly collected on a voluntary basis, DOL recognizes that the workforce longitudinal databases will be restricted to those individuals having supplied their SSN and will therefore not represent a complete database of all persons receiving workforce development services. These longitudinal databases should also include the capacity to link to unique identifiers developed by the ED statewide longitudinal data systems.

ii. Data Quality Measures

The applicant must provide a description of development or improvement of data validation measures and other quality assurance measures used to promote the quality, completeness, validity, and reliability of the data collected.

iii. Scope of the Longitudinal Data

Applicants must describe which programs are or will be included in the data system and the extent to which the following data will or can be matched through their longitudinal data system:

- Workforce Investment Act (WIA), Title I.
- Wagner-Peyser Act.
- Trade Adjustment Assistance and Trade Readjustment Allowances program data.
- UI wage record information from quarter to quarter measuring employment and income earning gains.
- UI benefit claims and demographic data.
- FEDES data.
- Existing State education agency data (including early childhood, K–12, and post-secondary education student demographic data, test scores, teachers, graduation rates, and transcripts).

Applicants must also include a description of the types of analysis and research projects that will be conducted with the workforce longitudinal database to improve program performance and enhance customer choice. For examples of effective uses of workforce longitudinal databases, please refer above to "Selected Benefits and Uses of State Longitudinal Data Systems" in the "Background" section of this SGA.

iv. Security Measures

Applicants must specify the plans they will develop or improve to protect the confidentiality of these records. The method for storing, transferring, analyzing and sharing data must be detailed in accordance with State and Federal confidentiality provisions. Applicants should also specify the planned data files—data records, elements, and fields—that will be contained in their workforce longitudinal data systems. Applicants should describe who will be designing, developing, storing, protecting and using the data.

v. Planned Reports/Deliverables

Applicants creating the longitudinal database must include in this section of the application their plans to produce reports that provide information about statewide performance of the workforce system. Applicants with partially or fully developed workforce longitudinal databases must describe the extensive research and analysis products that will be generated beyond the regular reporting and analysis requirements. Applicants must address how data from each partner will be incorporated into these reports, and how stakeholders can use the reports to improve the workforce system. Applicants should also describe their plan for disseminating reports and materials to the general public. These deliverables are for statewide or multi-state use and though DOL reserves the right to request access to these planned reports, submission of these deliverables to DOL is not required. (Required reports on performance in development of the workforce longitudinal databases to be submitted to DOL are outlined in Section VI.C below)

5. Staffing Capacity (10 Points)

Applicants must describe the proposed or existing staffing structure for this project, including project manager(s) and support staffing needs. Applicants will be scored on this section based on the thoroughness of their description of the following:

i. The workforce longitudinal database must be overseen by a Database Manager who is qualified to work with large and complex administrative longitudinal databases. The applicant must clearly list the duties and responsibilities of this position. The applicant must also describe the kinds of prior experience that the Database Manager (or other key managerial staff member) must possess in order to fulfill these duties and responsibilities.

ii. The duties and responsibilities of a data analyst(s).

iii. The identification and qualifications of proposed staff positions including knowledge, skills and abilities as well as examples of the kinds of previous experience that make a candidate for the position highly qualified to assist with planning, implementing and conducting analysis with these longitudinal databases. Detailed position descriptions may be included in the "Attachments to the Technical Proposal" within the page limits.

iv. How each staff member will be expected to facilitate or contribute to the various data-sharing partnerships. Be sure to include a brief discussion of how the applicant will ensure that any staff of this project will comply with State and Federal confidentiality laws. Please verify that State employees (with the workforce agency, other agencies or a State research institution for example) are already subject to State and institutional laws, regulations or procedures governing confidential data-sharing and/or transfer (please refer back to Section I.A.5 for more details) and be sure to include this in your description of such staff under this section.

v. What entity is to be the actual employer of each proposed staff

member. For those who are not direct employees of the SWA, discuss how these individuals will contribute to the project and describe what their compensation levels will be.

6. Bonus Points—Other Data Linkages (3 Points)

Up to three additional points may be awarded to applicants based on the extent to which they demonstrate concrete and feasible plans to include additional sources of data in their proposed longitudinal data system. These additional data sources may include Vocational Rehabilitation program information, Registered Apprenticeship program data, TANF records, Supplemental Nutrition Assistance Program (Food Stamps) records, and data from other similar programs which may yield workforce-related outcomes. These points will be awarded based on the ability of applicants to demonstrate their ability and their intentions to incorporate additional data sets and also on the number of additional data sets they intend to include into their proposed or existing longitudinal databases.

B. Review and Selection Process

Applications for grants under this solicitation will be accepted after the publication of this announcement and until the closing date. A technical review panel will make a careful evaluation of applications against the criteria. These criteria are based on the policy goals, priorities, and emphases set forth in this SGA. Up to 103 points may be awarded to an application, depending on the quality of the responses to the required information described in Section V.A above. The ranked scores will serve as the primary basis for selection of applications for funding, in conjunction with other factors such as geographical balance; the availability of funds; and which proposals are most advantageous to the government. The panel results are advisory in nature and not binding on the Grant Officer, and the Grant Officer may consider any information that comes to his/her attention. The government may elect to award the grant(s) with or without discussions with the applicants. Should a grant be awarded without discussions, the award will be based on the applicant's signature on the SF–424, which constitutes a binding offer by the applicant including electronic signature via E-Authentication on *http://www.grants.gov*.

Part VI. Award Administration Information

A. Award Notices

All award notifications will be posted on the ETA Homepage (*http://www.doleta.gov*). Applicants selected for award will be contacted directly before the grant's execution and non-selected applicants will be notified by mail. Selection of an organization as a grantee does not constitute approval of the grant application as submitted. Before the actual grant is awarded, the Department may enter into negotiations about such items as program components, staffing and funding levels, and administrative systems in place to support grant implementation. If the negotiations do not result in a mutually acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application.

B. Administrative and National Policy Requirements

1. Administrative Program Requirements

All grantees will be subject to all applicable Federal laws, regulations, and the applicable OMB Circulars. The grant(s) awarded under this SGA will be subject to the following administrative standards and provisions:

i. Non-Profit Organizations—OMB Circulars A–122 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

ii. Educational Institutions—OMB Circulars A–21 (Cost Principles) and 29 CFR part 95 (Administrative Requirements).

iii. State and Local Governments—OMB Circulars A–87 (Cost Principles) and 29 CFR part 97 (Administrative Requirements).

iv. Profit Making Commercial Firms—Federal Acquisition Regulation (FAR)—48 CFR part 31 (Cost Principles), and 29 CFR Part 95 (Administrative Requirements).

v. All entities must comply with 29 CFR Parts 93 and 98, and, where applicable, 29 CFR parts 96 and 99.

vi. 29 CFR part 2, subpart D—Equal Treatment in Department of Labor Programs for Religious Organizations, Protection of Religious Liberty of Department of Labor Social Service Providers and Beneficiaries.

vii. 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of Title VI of the Civil Rights Act of 1964.

viii. 29 CFR part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

iv. 29 CFR part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

x. 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

xi. 29 CFR part 36—Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

The following administrative standards and provisions may be applicable:

i. The Workforce Investment Act of 1998, Public Law 105–220, 112 Stat. 939 (codified as amended at 29 U.S.C. 2801 *et seq.*) and 20 CFR part 667 (General Fiscal and Administrative Rules).

ii. 29 CFR part 29 and 30—Apprenticeship and Equal Employment Opportunity in Apprenticeship and Training; and

iii. 29 CFR Part 37—Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998.

The Department notes that the Religious Freedom Restoration Act (RFRA), 42 U.S.C. sec. 2000bb, applies to all Federal law and its implementation. If your organization is a faith-based organization that makes hiring decisions on the basis of religious belief, it may be entitled to receive Federal financial assistance under Title I of the Workforce Investment Act and maintain that hiring practice even though section 188 of the Workforce Investment Act contains a general ban on religious discrimination in employment. If you are awarded a grant, you will be provided with information on how to request such an exemption.

iv. Under WIA section 181(a)(4), health and safety standards established under Federal and State law otherwise applicable to working conditions of employees are equally applicable to working conditions of participants engaged in training and other activities. Applicants that are awarded grants through this SGA are reminded that these health and safety standards apply to participants in these grants.

In accordance with section 18 of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65) (2 U.S.C. 1611) non-profit entities incorporated under Internal Revenue Service Code section 501(c) (4) that engage in lobbying activities are not eligible to receive Federal funds and grants.

Except as specifically provided in this SGA, DOL's acceptance of a proposal and an award of Federal funds to sponsor any programs(s) does not provide a waiver of any grant requirements and/or procedures. For example, the OMB Circulars require that an entity's procurement procedures must ensure that all procurement transactions are conducted, as much as practical, to provide open and free competition. If a proposal identifies a specific entity to provide services, DOL's award does not provide the justification or basis to sole source the procurement, *i.e.*, avoid competition, unless the activity is regarded as the primary work of an official partner to the application.

2. Special Program Requirements

DOL will require that the program or project participate in a formal evaluation of overall grant performance. DOL will provide both a technical assistance and evaluation provider to assist grantees in developing and implementing each State's WDQI to ensure smooth implementation and execution. To measure the success of the grant program, DOL will conduct an independent evaluation of the outcomes and benefits of the grants. Grantees must agree to work with DOL's designated evaluation and technical assistance providers and to provide access to program operating and technical personnel, as specified by the evaluator(s) under the direction of DOL, including after the expiration date of the grant.

C. Reporting

The grantee must submit quarterly financial reports, quarterly progress reports, and Management Information System (MIS) data electronically. The grantee is required to provide the regular reports and documents listed below:

1. Quarterly Financial Reports

A Quarterly Financial Status Report (ETA 9130) is required until such time as all funds have been expended or the grant period has expired. Quarterly reports are due 45 days after the end of each calendar year quarter. Grantees must use DOL's On-Line Electronic Reporting System and information and instructions will be provided to grantees.

2. Quarterly Progress Reports

The grantee must submit a quarterly progress report within 45 days after the end of each calendar year quarter. In the quarterly progress reports, grantees will be expected to address the status of developing MOUs with their intended partners as outlined in their grant application in addition to other partnerships they foster. Grantees should also take this opportunity to share the progress they are making with obtaining access to longitudinal workforce data (please *see* Section V.4.A.4 above of this SGA for a list of the data elements required). If the grantee is working with a developed or partially developed workforce longitudinal database, it must briefly describe the capacity of its database, and how it is being securely maintained and then explain in much greater depth the status of its plans to expand upon its present capacity.

3. Design Plan

The first report to be furnished on this project will be a detailed design plan which will expand upon and operationalize the activities proposed in this grant application as outlined in Part V of this SGA. This report must include a timeline which incorporates all project stages, milestones, targets and proposed schedule of deliverables stemming from the analysis of State workforce data for statewide dissemination. The grantee must submit a budget allotting the expenditure of this grant over the three year period including, but not limited to, considerations for equipment, personnel, fees and fixed costs. This report will be due to DOL 60 days after execution of final grant award.

4. Final Report

A draft final report must be submitted no later than 60 days before the expiration date of the grant. This report must summarize project activities, outcomes, and related results of the project, and should thoroughly document approaches. After responding to DOL questions and comments on the draft report, an original and two copies of the final report must be submitted no later than the grant expiration date. Grantees must agree to use a designated format specified by DOL for preparing the final report.

This information must be presented in narrative form and must include description of: Activities within the quarter being reported on, how problems or barriers from the previous quarter, if any, were addressed, any problems or challenges in the current quarter, how milestones or activities were successfully completed in the current quarter and plans for the next quarter. Also, reports should include updates on expected products or deliverables both for statewide dissemination and those to be submitted to DOL. Reports should include lessons learned in the areas of project administration and management, project implementation, partnership relationships, and other related information. DOL will provide grantees with guidance and tools to help develop the quarterly reports once the grants are awarded. Grantees must agree to meet DOL reporting requirements.

5. Record Retention

Applicants should be aware of Federal guidelines on record retention, which require grantees to maintain all records pertaining to grant activities for a period of not less than three years from the time of final grant close-out.

VII. Agency Contacts

For further information regarding this SGA, please contact Willie E. Harris, Grant Officer, Division of Federal Assistance, at (202) 693–3344 (this is not a toll-free number). Applicants should e-mail all technical questions to *harris.willie@dol.gov* and must specifically reference SGA/DFA PY 09–10, and along with question(s), include a contact name, fax and phone number.

This announcement is being made available on the ETA Web site at *http://www.doleta.gov/grants* and at *http://www.grants.gov*.

VIII. Additional Resources of Interest to Applicants

A. Resources for the Applicant

OMB Information Collection No. 1225–0086.

Expires November 30, 2012.

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 20 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Labor, to the attention of Darrin A. King, Departmental Clearance Officer, 200 Constitution Avenue NW., Room N1301, Washington, DC 20210. Comments may also be e-mailed to *DOL_PRA_PUBLIC@dol.gov*. Please do not return the completed applications to this address. Send it to the sponsoring agency as specified in this solicitation.

This information is being collected for the purpose of awarding a grant. The

information collected through this SGA will be used by DOL to ensure that grants are awarded to the applicant best suited to perform the functions of the grant. Submission of this information is required in order for the applicant to be considered for award of this grant. Unless otherwise specifically noted in this announcement, information submitted in the respondent's application is not considered to be confidential.

Willie E. Harris is the grant officer overseeing this SGA.

Signed at Washington, DC this 11th day of May, 2010.

Eric Luetkenhaus,

Grant Officer.

[FR Doc. 2010–11610 Filed 5–14–10; 8:45 am]

BILLING CODE 4510–FN–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Thursday, May 20, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Briefing on Final Rule—Parts 741 and 761 of NCUA's Rules and Regulations, Implementation of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act).
2. Extension of the Temporary Corporate Credit Union Liquidity Guarantee Program.
3. Insurance Fund Report.

RECESS: 11 a.m.

TIME AND DATE: 11:15 a.m., Thursday, May 20, 2010.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Member Business Loan Waiver Appeal. Closed pursuant to Exemption (8).
2. Consideration of Supervisory Activities (2). Closed pursuant to some or all of the following exemptions: (8), (9)(A)(ii) and 9(B).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2010–11879 Filed 5–13–10; 4:15 pm]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0492]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of issuance and availability of Regulatory Guide 6.7, Revision 2, "Preparation of an Environmental Report To Support a Rulemaking Petition Seeking an Exemption for a Radionuclide-Containing Product."

FOR FURTHER INFORMATION CONTACT: Catherine R. Mattsen, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6264 or e-mail *Catherine.Mattsen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's "Regulatory Guide" series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 6.7 was issued with a temporary identification as Draft Regulatory Guide, DG–6008. This guide provides general procedures for the preparation of environmental reports (ERs), that are submitted to support a rulemaking petition for an exemption for a radionuclide-containing product, and it replaces Revision 1 of Regulatory Guide 6.7, issued June 1976. Use of this regulatory guide will help to ensure the completeness of the information provided in the ER, assist the staff of the NRC and others in locating pertinent information, and facilitate the environmental review process. However, the NRC does not require conformance with the procedures in the regulatory guide, which are provided for guidance only.

II. Further Information

In November 2009, DG–6008 was published with a public comment period of 60 days from the issuance of the guide. No comments were received and the public comment period closed on January 8, 2010. Electronic copies of Regulatory Guide 6.7, Revision 2 are available through the NRC's public Web site under "Regulatory Guides" at *http://www.nrc.gov/reading-rm/doc-collections/.*

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov.*

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 10th day of May, 2010.

For the Nuclear Regulatory Commission.

/RA/

Andrea D. Valentin,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2010–11676 Filed 5–14–10; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19b–5 and Form PILOT; SEC File No. 270–448; OMB Control No. 3235–0507.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information provided for in Rule 19b–5 (17 CFR 240.19b–5) and Form PILOT (17 CFR 249.821) under the Securities Exchange Act of 1934, as amended ("Act") (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 19b–5 provides a temporary exemption from the rule-filing requirements of Section 19(b) of the Act (15 U.S.C. 78s(b)) to self-regulatory organizations ("SROs") wishing to establish and operate pilot trading systems. Rule 19b–5 permits an SRO to

develop a pilot trading system and to begin operation of such system shortly after submitting an initial report on Form PILOT to the Commission. During operation of any such pilot trading system, the SRO must submit quarterly reports of the system's operation to the Commission, as well as timely amendments describing any material changes to the system. After two years of operating such pilot trading system under the exemption afforded by Rule 19b–5, the SRO must submit a rule filing pursuant to Section 19(b)(2) (15 U.S.C. 78s(b)(2)) of the Act in order to obtain permanent approval of the pilot trading system from the Commission.

The collection of information is designed to allow the Commission to maintain an accurate record of all new pilot trading systems operated by SROs and to determine whether an SRO has properly availed itself of the exemption afforded by Rule 19b–5, is operating a pilot trading system in compliance with the Act, and is carrying out its statutory oversight obligations under the Act.

The respondents to the collection of information are national securities exchanges and national securities associations.

While there are 14 national securities exchanges and national securities associations that may avail themselves of the exemption under Rule 19b–5 and the use of Form PILOT, it is estimated that approximately three respondents will file a total of 3 initial reports, 12 quarterly reports, and 6 amendments on Form PILOT per year, with an estimated total annual response burden of 126 hours. At an average hourly cost of $307.74, the estimated aggregate related cost of compliance with Rule 19b–5 for all respondents is $38,775 per year (126 burden hours multiplied by $307.74/hour = $38,775).

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to: Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: May 10, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11660 Filed 5–14–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rule 17a–8; SEC File No. 270–225; OMB Control No. 3235–0235]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–8; SEC File No. 270–225; OMB Control No. 3235–0235.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17a–8 (17 CFR 270.17a–8) under the Investment Company Act of 1940 (the "Act") (15 U.S.C. 80a) is entitled "Mergers of affiliated companies." Rule 17a–8 exempts certain mergers and similar business combinations ("mergers") of affiliated registered investment companies ("funds") from prohibitions under section 17(a) of the Act (15 U.S.C. 80a–17(a)) on purchases and sales between a fund and its affiliates. The rule requires fund directors to consider certain issues and to record their findings in board minutes. The rule requires the directors of any fund merging with an unregistered entity to approve procedures for the valuation of assets received from that entity. These procedures must provide for the preparation of a report by an independent evaluator that sets forth the fair value of each such asset for which market quotations are not readily available. The rule also requires a fund being acquired to obtain approval of the merger transaction by a majority of its outstanding voting securities, except in certain situations, and requires any surviving fund to preserve written records describing the merger and its terms for six years after the merger (the first two in an easily accessible place).

The average annual burden of meeting the requirements of rule 17a–8 is estimated to be 7 hours for each fund. The Commission staff estimates that each year approximately 610 funds rely on the rule. The estimated total average annual burden for all respondents therefore is 4270 hours.

This estimate represents a decrease of 2170 hours from the prior estimate of 6440 hours. The decrease results from a change in the methodology used to estimate the number of mergers between affiliated funds or fund portfolios.

The average cost burden of preparing a report by an independent evaluator in a merger with an unregistered entity is estimated to be $15,000. The average net cost burden of obtaining approval of a merger transaction by a majority of a fund's outstanding voting securities is estimated to be $80,000. The Commission staff estimates that each year approximately 0 mergers with unregistered entities occur and approximately 15 funds hold shareholder votes that would not otherwise have held a shareholder vote to comply with State law. The total annual cost burden of meeting these requirements is estimated to be $1,200,000.

The estimates of average burden hours and average cost burdens are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study. 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.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO,

Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: May 10, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11659 Filed 5–14–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rule 15a–6; SEC File No. 270–0329; OMB Control No. 3235–0371]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 15a–6; SEC File No. 270–0329; OMB Control No. 3235–0371.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the existing collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 15a–6 (17 CFR 240.15a–6) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) provides, among other things, an exemption from broker-dealer registration for foreign broker-dealers that effect trades with or for U.S. institutional investors through a U.S. registered broker-dealer, provided that the U.S. broker-dealer obtains certain information about, and consents to service of process from, the personnel of the foreign broker-dealer involved in such transactions, and maintains certain records in connection therewith.

These requirements are intended to ensure (a) that the U.S. broker-dealer will receive notice of the identity of, and has reviewed the background of, foreign personnel who will contact U.S. institutional investors, (b) that the foreign broker-dealer and its personnel effectively may be served with process in the event enforcement action is necessary, and (c) that the Commission has ready access to information concerning these persons and their U.S. securities activities.

It is estimated that approximately 2,000 respondents will incur an average burden of three hours per year to comply with this rule, for a total burden of 6,000 hours. At an average cost per hour of approximately $105, the resultant total cost of compliance for the respondents is $600,000 per year (2,000 entities × 3 hours/entity × $105/hour = $630,000).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Charles Boucher, Director/Chief Information Officer, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: May 10, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11658 Filed 5–14–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rule 0–4; SEC File No. 270–569; OMB Control No. 3235–0633]

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Existing Collection; New OMB Control No.:

Rule 0–4; SEC File No. 270–569; OMB Control No. 3235–0633.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this collection of information to the Office of Management and Budget for extension and approval.

Rule 0–4 (17 CFR 275.0–4) under the Investment Advisers Act of 1940 ("Act" or "Advisers Act") (15 U.S.C. 80b–1 *et seq.*) entitled "General Requirements of Papers and Applications," prescribes general instructions for filing an application seeking exemptive relief with the Commission. Rule 0–4 currently requires that every application for an order for which a form is not specifically prescribed and which is executed by a corporation, partnership or other company and filed with the Commission contain a statement of the applicable provisions of the articles of incorporation, bylaws or similar documents, relating to the right of the person signing and filing such application to take such action on behalf of the applicant, and a statement that all such requirements have been complied with and that the person signing and filing the application is fully authorized to do so. If such authorization is dependent on resolutions of stockholders, directors, or other bodies, such resolutions must be attached as an exhibit to or quoted in the application. Any amendment to the application must contain a similar statement as to the applicability of the original statement of authorization. When any application or amendment is signed by an agent or attorney, rule 0–4 requires that the power of attorney evidencing his authority to sign shall state the basis for the agent's authority and shall be filed with the Commission. Every application subject to rule 0–4 must be verified by the person executing the application by providing a notarized signature in substantially the form specified in the rule. Each application subject to rule 0–4 must state the reasons why the applicant is deemed to be entitled to the action requested with a reference to the provisions of the Act and rules thereunder, the name and address of each applicant, and the name and address of any person to whom any questions regarding the application should be directed. Rule 0–4 requires that a proposed notice of the proceeding initiated by the filing of the application accompany each application as an exhibit and, if necessary, be modified to reflect any amendment to the application.

The requirements of rule 0–4 are designed to provide Commission staff with the necessary information to assess whether granting the orders of exemption are necessary and appropriate in the public interest and consistent with the protection of investors and the intended purposes of the Act.

Applicants for orders under the Advisers Act can include registered investment advisers, affiliated persons of registered investment advisers, and entities seeking to avoid investment adviser status, among others. Commission staff estimates that it receives approximately 9 applications per year submitted under rule 0–4 of the Act. Although each application typically is submitted on behalf of multiple applicants, the applicants in the vast majority of cases are related entities and are treated as a single respondent for purposes of this analysis. Most of the work of preparing an application is performed by outside counsel and, therefore, imposes no hourly burden on respondents. The cost outside counsel charges applicants depends on the complexity of the issues covered by the application and the time required. Based on conversations with applicants and attorneys, the cost ranges from approximately $7,000 for preparing a well-precedented, routine application to approximately $80,000 to prepare a complex or novel application. We estimate that the Commission receives 2 of the most time-consuming applications annually, 4 applications of medium difficulty, and 3 of the least difficult applications subject to rule 0–4. This distribution gives a total estimated annual cost burden to applicants of filing all applications of $355,000 [(2 × $80,000) + (4 × $43,500) + (3 × $7,000)]. The estimates of annual burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

The requirements of this collection of information are required to obtain or retain benefits. Responses will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: May 10, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11657 Filed 5–14–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Extension:

Regulation S; OMB Control No. 3235–0357; SEC File No. 270–315.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Regulation S (17 CFR 230.901 through 230.905) includes rules governing offers and sales of securities made outside the United States without registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The purpose of Regulation S is to provide clarification of the extent to which Section 5 of the Securities Act applies to offers and sales of securities outside of the United States. Regulation S is assigned one burden hour for administrative convenience.

Written comments are invited on: (a) Whether this collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Charles Boucher, Director/CIO, Securities and Exchange Commission, c/o Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: May 10, 2010.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11656 Filed 5–14–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of BVR Technologies Ltd. (n/k/a Technoprises Ltd.), Crystal Graphite Corp., Devine Entertainment Corp., GEE TEN Ventures, Inc., National Construction, Inc. (n/k/a E.G. Capital, Inc.), SHEP Technologies, Inc., and WHEREVER.Net Holding Corp.; Order of Suspension of Trading

May 13, 2010.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of BVR Technologies Ltd. (n/k/a Technoprises Ltd.) because it has not filed any periodic reports since the period ended December 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Crystal Graphite Corp. because it has not filed any periodic reports since the period ended August 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Devine Entertainment Corp. because it has not filed any periodic reports since the period ended September 30, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GEE TEN Ventures, Inc. because it has not filed any periodic reports since the period ended May 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of National Construction, Inc. (n/k/a E.G. Capital, Inc.) because it has not filed any

periodic reports since the period ended February 28, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of SHEP Technologies, Inc. because it has not filed any periodic reports since the period ended December 31, 2004.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of WHEREVER.Net Holding Corp. because it has not filed any periodic reports since it filed a Form 8–A on April 26, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 13, 2010 and terminating at 11:59 p.m. EDT on May 26, 2010.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2010–11806 Filed 5–13–10; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62067; File No. SR–NYSEAmex–2010–41]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Strike Price Intervals and Trading Hours for Options on Index Linked Securities

May 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 28, 2010, NYSE Amex LLC ("NYSE Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 903 Commentary .05 to establish strike price intervals for options on Index Linked Securities,[3] and to amend Rule 901NY Commentary .02, to establish trading hours for these products. The text of the proposed rule change is available on NYSE Amex's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Rule 903 Commentary .05, and to amend Rule 901NY Commentary .02, to establish strike price intervals and trading hours for options on Index-Linked Securities ("ILS"), also known as Exchange-Traded Notes ("ETN"), prior to the Exchange actually listing and trading these products.

The Commission has approved the Exchange's proposal, as well as the proposals of other options exchanges, to enable the listing and trading of options on ILS (ETN).[4] Options trading has not commenced to date and is contingent upon the Commission's approval of The Options Clearing Corporation's ("OCC") proposed supplement to the Options Disclosure Document ("ODD") that will provide disclosure regarding options on Index-Linked Securities.[5]

$1 Strikes for ILS (ETN) Options

Prior to the commencement of trading options on Index-Linked Securities, the Exchange is proposing to establish that strike price intervals of $1 will be permitted where the strike price is less than $200. Where the strike price is greater than $200, $5 strikes will be permitted. These proposed changes are reflected by the addition to Commentary .05 to Rule 903.

The Exchange is seeking to establish $1 strikes for ILS (ETN) options where the strike price is less than $200 because the Exchange believes the marketplace and investors will be expecting these types of options to trade in a similar manner to options on exchange-traded funds ("ETFs"). Strike prices for ETF options are permitted in $1 or greater intervals where the strike price is $200 or less and $5 or greater where the strike price is greater than $200. Accordingly, the Exchange believes that the rationale for permitting $1 strikes for ETF options equally applies to permitting $1 strikes for ILS (ETN) options, and that investors will be better served if $1 strike price intervals are available for ILS (ETN) options where the strike price is less than $200. The Exchange believes that $1 strike price intervals for options on Index-Linked Securities will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

Trading Hours for ILS (ETN) Options

The Exchange proposes to amend Commentary .02 to Rule 901NY to provide that options on exchange-traded notes including Index-Linked Securities may be traded on the Exchange until 1:15 p.m. (Pacific Time) each business day. This will establish similar trading hours for ILS (ETN) options as the

[3] Index-Linked Securities, also known as exchange-traded notes, are long-term notes that are the non-convertible debt of an issuer with a term of at least one year but not greater than thirty years. These exchange-traded securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes. The Exchange's listing standards for options on Index-Linked Securities were established in September, 2008. *See* Securities Exchange Act Release No. 58516 (September 11, 2008), 73 FR 54184 (September 18, 2008) (SR–NYSEAmex–2008–69). Other Exchanges have established similar listing standards. *See* Securities Exchange Act Release Nos. 58571 (September 17, 2008), 73 FR 55188 (September 24, 2008) (SR–Phlx–2008–60) (notice of filing and immediate effectiveness); 59923 (May 14, 2009), 74 FR 23902 (May 21, 2009) (SR–NASDAQ–2009–046) (notice of filing and immediate effectiveness); 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (SR–CBOE–2008–64) (approval order); 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (SR–NYSEArca–2008–57) (approval order); and 58985 (November 20, 2008), 73 FR 72538 (November 28, 2008) (SR–ISE–2008–86) (notice of filing and immediate effectiveness).

[4] *See* supra Note 3.

[5] OCC previously received Commission approval to clear options based on Index-Linked Securities. *See* Securities Exchange Act Release No. 60872 (October 23, 2009), 74 FR 55878 (October 29, 2009) (SR–OCC–2009–14) (approval order).

currently-established trading hours for ETF options.

The Exchange expects that other option exchanges that have adopted rules providing for the listing and trading of options on Index-Linked Securities has or will submit similar proposals.[6]

The Exchange has analyzed its capacity and believes the Exchange and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes where the strike price is less than $200 for ILS (ETN) options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest by having strike price intervals and trading hours established prior to the commencement of trading in options on Index-Linked Securities and thereby lessening the likelihood for investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that doing so is consistent with the protection of investors and the public interest. The Commission notes that it recently approved the same changes to strike price intervals and trading hours for options on Index-Linked Securities for another exchange.[11] The Commission believes that the proposed changes to strike price intervals and trading hours for options on Index-Linked Securities do not raise any novel regulatory issues, and waiver of the operative delay should benefit investors by creating consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs. Therefore, the Commission designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2010–41 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2010–41 and should be submitted on or before June 7, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11650 Filed 5–14–10; 8:45 am]

BILLING CODE 8010–01–P

[6] *See, for example,* Securities Exchange Act Release No. 61466 (February 2, 2010), 75 FR 6243 (February 8, 2010) (SR–CBOE–2010–005) (notice of filing).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] *See* Securities Exchange Act Release Nos. 61696 (March 12, 2010), 75 FR 13174 (March 18, 2010) (SR–CBOE–2010–005); 61943 (April 20, 2010), 75 FR 21689 (April 26, 2010) (SR–Phlx–2010–40).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62060; File No. SR–Phlx–2010–68]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to One Cent Strike Price Intervals of Foreign Currency Options

May 7, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 29, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing with the Commission a proposal to amend Rule 1012 (Series of Options Open for Trading) by adding a provision that permits the Exchange to list, in addition to strike prices that are currently permitted, a single strike price of one cent ($0.01) for each expiration month for U.S. dollar-settled foreign currency options ("FCOs") opened for trading on the Exchange.[3]

The text of the proposed rule change is available on Phlx's Web site at *http://www.nasdaqtrader.com,* on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Rule 1012 to list a single strike price of one cent ($0.01) for each expiration month for U.S. dollar-settled FCOs opened for trading on the Exchange. The proposed one cent strike would be in addition to the strike prices listed by the Exchange pursuant to Rule 1012.

Background

In January 2007, the Exchange listed and began trading U.S. dollar-settled FCOs on the British pound and the Euro.[4] In July 2007, the Exchange listed and began trading U.S. dollar-settled FCOs on the Australian dollar, Canadian dollar, Swiss franc, and Japanese yen.[5] Through the spring of 2007 the Exchange traded, through open outcry, physical delivery options on foreign currencies that are so named because settlement could involve delivery of the underlying currency (as opposed to cash for U.S. dollar-settled FCOs); these products are no longer listed and traded on the Exchange nor is there any remaining open interest. Within the last year, the Exchange listed and began trading U.S. dollar-settled FCOs on the Mexican peso, the New Zealand dollar, the South African rand, the Swedish krona, and the Norwegian krone (all of the listed U.S. dollar-settled options are together known as the "FCO Products" or "WCO Products").[6] Eleven FCO Products continue being traded electronically over the Exchange's options trading platform, now known as Phlx XL II.[7]

Currently, pursuant to Rule 1012(a)(iii)(U.S. Dollar-Settled Foreign Currency Options), after a class of options contracts on any underlying currency has been approved for listing and trading, the Exchange may open for trading series of FCO Products that expire in consecutive monthly intervals,[8] in three or "cycle" month intervals,[9] or that have up to thirty-six months to expiration.[10] For example, pursuant to Rule 1012(a)(iii)(A), with respect to each class of FCOs, the Exchange may open for trading series of options having up to four consecutive expiration months, with the shortest term series initially having no more than two months to expiration. The Exchange may also open additional consecutive month series of the same class for trading at or about the time a prior consecutive month series expires, and the expiration month of each such new series shall normally be the month immediately succeeding the expiration month of the then outstanding consecutive month series of the same class of options having the longest remaining time to expiration.

The Proposal

Pursuant to proposed new subsection (a)(iii)(D) of Rule 1012, for each month that a foreign currency options is listed for trading per Rule 1012(a)(iii), the Exchange would list an additional strike price of one cent.

The Exchange notes that adding a one cent strike for FCOs will result in a single deep-in-the-money option to provide investors with exposure similar to that of a spot currency transaction.[11] The Exchange believes creating such exposure provides an opportunity to attract a broader range of market participants by offering a product that, in particular, accommodates retail spot foreign currency traders.

The Exchange also believes that a one cent strike price would enable certain trading strategies that were previously unavailable to investors. Specifically, investors would be able to engage in strategies that offer similar exposure to a tied-to-spot trade, such as a buy-write trade. The proposed new strike should also appeal to securities brokers that do not currently offer spot foreign currency trading. The Exchange believes that certain online securities brokers have not offered spot foreign currency trading to their customers because, unlike options, spot foreign currency is not a listed and centrally-cleared product. The Exchange's proposed rule change offers such brokers an opportunity to expand their offerings and retain customer assets that may otherwise go to spot foreign currency trading venues

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] FCOs are also known as World Currency Options ("WCOs"). Eleven FCOs or WCOs are currently listed and traded on the Exchange.

[4] *See* Securities Exchange Act Release No. 54989 (December 21, 2006), 71 FR 78506 (December 29, 2006) (SR–Phlx–2006–34).

[5] *See* Securities Exchange Act Release No. 56034 (July 10, 2007), 72 FR 38853 (July 16, 2007) (SR–Phlx–2007–34).

[6] *See* Securities Exchange Act Release No. 60169 (June 24, 2009), 74 FR 31782 (July 2, 2009) (SR–Phlx–2009–40) (approval order).

[7] *See* Securities Exchange Act Release Nos. 49832 (June 8, 2004), 69 FR 33442 (June 15, 2004) (SR–Phlx–2003–59) (order approving Phlx XL); and 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32) (order approving Phlx XL II).

[8] Rule 1012(a)(iii)(A).

[9] Rule 1012(a)(iii)(B).

[10] Rule 1012(a)(iii)(C).

[11] The spot currency market may also be known as the "cash market" or "physical market" because prices are settled in cash on the spot at current market prices.

that operate outside of U.S. regulatory jurisdiction.[12]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[13] in general, and furthers the objectives of Section 6(b)(5) of the Act[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, by allowing the Exchange to list a single one cent strike for each expiration month of foreign currency options opened for trading and thereby provide investors with the ability to engage in previously unavailable spot foreign currency trading strategies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6) thereunder.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Phlx–2010–68 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2010–68 and should be submitted on or before June 7, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Elizabeth M. Murphy,

Secretary.

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BILLING CODE 8010–01–P

[12] The Exchange believes that, as borne out in the current economic crisis, market participants benefit from being able to trade options in an exchange environment in several ways, including, but not limited to, the following: (1) Regulatory oversight of the options exchanges/markets; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation ("OCC") as issuer and guarantor of options including FCO Products.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62064; File No. SR–FINRA–2010–020]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Trade Reporting Facility Limited Liability Company Agreements

May 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 27, 2010, the Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as being concerned solely with the administration of the self-regulatory organization under Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(3).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to make technical changes to the Trade Reporting Facility limited liability company agreements, as they appear in the FINRA Manual, to reflect that the agreements were amended and restated following the formation of FINRA through the consolidation of NASD and the member regulatory functions of NYSE Regulation. The proposed rule change does not require amendments to any FINRA rules.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* on the Commission's Web site at *http://www.sec.gov,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The FINRA Trade Reporting Facilities ("TRFs") are mechanisms for reporting trades in NMS stocks effected otherwise than on an exchange. Currently, there are two TRFs in operation: The FINRA/Nasdaq TRF and the FINRA/NYSE TRF. At the time the TRFs were established, FINRA (then NASD) entered into limited liability company agreements with the respective Business Members, Nasdaq Stock Market (now known as Nasdaq OMX Group) and New York Stock Exchange (the "TRF LLC Agreements").

Following the establishment of the TRFs, FINRA was formed through the consolidation of NASD and the member regulatory functions of NYSE Regulation, effective July 30, 2007. FINRA and the TRF Business Members subsequently executed amended and restated TRF LLC Agreements to reflect the formation of FINRA and updated the schedules to reflect new TRF officers and directors.

FINRA is proposing to make technical changes to the TRF LLC Agreements, as they appear in the FINRA Manual, to reflect the amended and restated agreements and updated schedules. The terms and conditions of the amended and restated TRF LLC Agreements are substantively identical to those of the original TRF LLC Agreements. In this filing, FINRA is not proposing to amend any FINRA rules.

FINRA has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[5] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will enhance the information available to members and the public regarding FINRA's TRF LLC Agreements.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[6] and paragraph (f)(3) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2010–020 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–020. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2010–020 and should be submitted on or before June 7, 2010.

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(3).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11652 Filed 5–14–10; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62066; File No. SR–NYSEArca–2010–37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Strike Price Intervals and Trading Hours for Options on Index Linked Securities

May 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 28, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to Rule 6.4 Commentary .05 to establish strike price intervals for options on Index Linked Securities,[3] and to amend Rule 7.1 Commentary .02, to establish trading hours for these products. The text of the proposed rule change is available on NYSE Arca's Web site at *http://www.nyse.com,* on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend Rule 6.4 Commentary .05 and Rule 7.1 Commentary .02 to establish strike price intervals and trading hours for options on Index-Linked Securities ("ILS"), also known as Exchange-Traded Notes ("ETN"), prior to the Exchange actually listing and trading these products.

The Commission has approved the Exchange's proposal, as well as the proposals of other options exchanges, to enable the listing and trading of options on ILS (ETN).[4] Options trading has not commenced to date and is contingent upon the Commission's approval of The Options Clearing Corporation's ("OCC") proposed supplement to the Options Disclosure Document ("ODD") that will provide disclosure regarding options on Index-Linked Securities.[5]

$1 Strikes for ILS (ETN) Options

Prior to the commencement of trading options on Index-Linked Securities, the Exchange is proposing to establish that strike price intervals of $1 will be permitted where the strike price is less than $200. Where the strike price is greater than $200, $5 strikes will be permitted. These proposed changes are reflected by the addition to Commentary .05 to Rule 6.4.

The Exchange is seeking to establish $1 strikes for ILS (ETN) options where the strike price is less than $200 because the Exchange believes the marketplace and investors will be expecting these types of options to trade in a similar manner to options on exchange-traded funds ("ETFs"). Strike prices for ETF options are permitted in $1 or greater intervals where the strike price is $200 or less and $5 or greater where the strike price is greater than $200. Accordingly, the Exchange believes that the rationale for permitting $1 strikes for ETF options equally applies to permitting $1 strikes for ILS (ETN) options, and that investors will be better served if $1 strike price intervals are available for ILS (ETN) options where the strike price is less than $200. The Exchange believes that $1 strike price intervals for options on Index-Linked Securities will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

Trading Hours for ILS (ETN) Options

The Exchange proposes to amend Commentary .02 to Rule 7.1 to provide that options on exchange-traded notes including Index-Linked Securities may be traded on the Exchange until 1:15 p.m. (Pacific Time) each business day. This will establish similar trading hours for ILS (ETN) options as the currently-established trading hours for ETF options.

The Exchange expects that other option exchanges that have adopted rules providing for the listing and trading of options on Index-Linked Securities has or will submit similar proposals.[6]

The Exchange has analyzed its capacity and believes the Exchange and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to handle the additional traffic associated with the listing and trading of $1 strikes where the strike price is less than $200 for ILS (ETN) options.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the "Act"), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Index-Linked Securities, also known as exchange-traded notes, are long-term notes that are the non-convertible debt of an issuer with a term of at least one year but not greater than thirty years. These exchange-traded securities are designed for investors who desire to participate in a specific market segment by providing exposure to one or more identifiable underlying securities, commodities, currencies, derivative instruments or market indexes. The Exchange's listing standards for options on Index-Linked Securities were established in July 2008. *See* Securities Exchange Act Release No. 58203 (July 22, 2008), 73 FR 43812 (July 28, 2008) (SR–NYSEArca–2008–57). Other Exchanges have established similar listing standards. *See* Securities Exchange Act Release Nos. 58571 (September 17, 2008), 73 FR 55188 (September 24, 2008) (SR–Phlx–2008–60) (notice of filing and immediate effectiveness); 59923 (May 14, 2009), 74 FR 23902 (May 21, 2009) (SR–NASDAQ–2009–046) (notice of filing and immediate effectiveness); 58204 (July 22, 2008), 73 FR 43807 (July 28, 2008) (SR–CBOE–2008–64) (approval order); and 58985 (November 20, 2008), 73 FR 72538 (November 28, 2008) (SR–ISE–2008–86) (notice of filing and immediate effectiveness).

[4] *See* supra Note 3.

[5] OCC previously received Commission approval to clear options based on Index-Linked Securities. *See* Securities Exchange Act Release No. 60872 (October 23, 2009), 74 FR 55878 (October 29, 2009) (SR–OCC–2009–14) (approval order).

[6] *See, for example,* Securities Exchange Act Release No. 61466 (February 2, 2010), 75 FR 6243 (February 8, 2010) (SR–CBOE–2010–005) (notice of filing).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

impediments to and to perfect the mechanism for a free and open market and a national market system by having strike price intervals and trading hours established prior to the commencement of trading in options on Index-Linked Securities and thereby lessening the likelihood for investor confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder.[10]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that doing so is consistent with the protection of investors and the public interest. The Commission notes that it recently approved the same changes to strike price intervals and trading hours for options on Index-Linked Securities for another exchange.[11] The Commission believes that the proposed changes to strike price intervals and trading hours for options on Index-Linked Securities do not raise any novel regulatory issues, and waiver of the operative delay should benefit investors by creating consistency and predictability for investors who may view these products as serving similar investment functions in the marketplace to ETFs. Therefore, the Commission designates the proposal operative upon filing.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–37 and should be submitted on or before June 7, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the self-regulatory organization to submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] *See* Securities Exchange Act Release Nos. 61696 (March 12, 2010), 75 FR 13174 (March 18, 2010) (SR–CBOE–2010–005); 61943 (April 20, 2010), 75 FR 21689 (April 26, 2010) (SR–Phlx–2010–40).

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62071; File No. SR–NYSEArca–2010–40]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Rule Change Amending Its Fee Schedule

May 11, 2010.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the "Act") [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on April 30, 2010, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services (the "Schedule"). While changes to the Schedule pursuant to this proposal will be effective upon

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

filing, the changes will become operative on May 1, 2010. The text of the proposed rule change is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office, on the Commission's Web site at *http://www.sec.gov* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to change the rates for orders routed to the NYSE in conjunction with similar pricing changes the NYSE is making operative from May 1, 2010. Under this proposal, the Tier 1 and Tier 2 rate for orders routed to the NYSE will be $0.0021 per share. Previously the rate was set at $0.0018 per share. Similarly, the non-tier rate for routing to the NYSE will go from $0.0020 per share to $0.0023 per share. The Exchange also proposes to change the rates for PO+ orders routed to the NYSE in Tape A securities. Under this proposal, the rebate for PO+ Orders that provide liquidity to the Book is $0.0013 per share and the fee for removing liquidity is $0.0021 per share. Previously the rebate for PO+ Orders providing liquidity was $0.0010 per share and the fee for removing liquidity was $0.0018 per share. Finally, the Exchange proposes to change the rates for Primary Sweep Orders ("PSO") in Tape A securities. Under this proposal, the fee for routing a PSO Order to the NYSE in Tape A securities will be 0.0019 per share. Previously the fee was set at $0.0016 per share.

The proposed changes coincide with the pricing changes that the NYSE is making operative from May 1, 2010. The Exchange believes the proposed fees are reasonable and equitable in that they apply uniformly to all similarly situated ETP Holders. The proposed changes will also become operative on May 1, 2010.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Securities Exchange Act of 1934 (the "Act"),[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed changes coincide with the pricing changes that the NYSE is making. The proposed changes to the Schedule are reasonable and equitable in that they apply uniformly to all similarly situated ETP Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2010–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2010–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2010–40 and should be submitted on or before June 7, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11648 Filed 5–14–10; 8:45 am]

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[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–62069; File No. SR–Phlx–2010–66]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Equity Option Fees

May 10, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 2010, NASDAQ OMX PHLX, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Fee Schedule applicable to equity options fees by: (i) Adopting an options transaction charge and options surcharge for non-electronically delivered orders for options transactions by Registered Options Traders (on-floor) and Specialists; (ii) amending the current options transaction charge for Registered Options Traders (on-floor) and Specialists and applying that charge and the options surcharge to electronically delivered orders; and (iii) creating an options transaction charge for option orders in the penny pilot program ("Penny Pilot")[3] that are electronically delivered. The Exchange also proposes making a technical clarification. The text of the proposed rule change is available on Phlx's Web site at *http://www.nasdaqtrader.com,* on the Commission's Web site at *http://www.sec.gov,* and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Category II of the Fee Schedule, Equity Option Fees, to create separate fees for electronically delivered versus non-electronically delivered orders of Registered Options Traders (on-floor) and Specialists. A transaction resulting from an order that was electronically delivered[4] utilizes Phlx XL II.[5] A transaction resulting from an order that is non-electronically-delivered is represented on the trading floor by a floor broker.[6] All orders will be either electronically or non-electronically delivered.

The Exchange currently categorizes its broker-dealer fees by electronically and non-electronically delivered orders.[7] The Exchange proposes to create these new fee categories for Registered Options Traders and Specialists orders. The Exchange is creating these new fee categories in further recognition of the distinction between the floor order entry model and the electronic model and also in response to competition along the same lines.

Electronically Delivered

The Exchange is proposing to adopt fees for electronically delivered orders. The Exchange proposes to amend its current equity options fees to Registered Options Traders (on-floor) and Specialists by titling those fees as "Electronically Delivered."

The Exchange currently assesses two types of equity options transaction charges on Registered Options Traders (on-floor) and Specialists: (i) A $.22 per contract options transaction charge; and (ii) a $.15 per contract options surcharge for executions in options on the Russell 2000® Index (the "Full Value Russell Index" or "RUT"), options on the one-tenth value Russell 2000® Index[8] (the "Reduced Value Russell Index" or "RMN"), options on the Nasdaq 100 Index[9] traded under the symbol NDX ("NDX") and options on the one-tenth value of the Nasdaq 100 Index traded under the symbol MNX ("MNX"). The Exchange proposes increasing its current $.22 per contract options transaction charge to $.23 per contract and amending the title of this fee to "Options Transaction Charge (non-Penny Pilot)" to indicate this fee would be applicable to Registered Options Traders (on-floor) and Specialists for a transaction resulting from an order that was electronically delivered and not in the Penny Pilot. In addition, the Exchange proposes to adopt a $.22 transaction charge for Penny Pilot options classes for transactions resulting from an order that was electronically delivered. The Exchange does not propose to amend the options surcharge for RUT, RMN, MNX or NDX for electronically delivered orders.

Non-Electronically Delivered

The Exchange is proposing to adopt fees for non-electronically delivered orders. The Exchange proposes to adopt a transaction charge for Registered

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in January 2007; and in October 2009, it was expanded and extended through December 31, 2010. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (approval order establishing Penny Pilot); 60873 (October 23, 2009), 74 FR 56675 (November 2, 2009) (SR–Phlx–2009–91) (expanding and extending Penny Pilot); 60966 (November 9, 2009), 74 FR 59331 (November 17, 2009) (SR–Phlx–2009–94) (adding seventy-five classes to Penny Pilot); and 61454 (February 1, 2010), 75 FR 6233 (February 8, 2010) (SR–Phlx–2010–12) (adding seventy-five options classes to the Penny Pilot). *See also* Exchange Rule 1034.

[4] Electronically delivered orders do not include orders delivered through the Floor Broker Management System.

[5] *See* Exchange Rules 1014 and 1080.

[6] *See* Exchange Rule 1063.

[7] Specifically, broker-dealers are assessed an options transaction charge of $.45 per contract fee [sic] for electronically delivered orders and an options transaction charge of $.25 per contract for non-electronically delivered orders.

[8] Russell 2000® is a trademark and service mark of the Frank Russell Company, used under license. Neither Frank Russell Company's publication of the Russell Indexes nor its licensing of its trademarks for use in connection with securities or other financial products derived from a Russell Index in any way suggests or implies a representation or opinion by Frank Russell Company as to the attractiveness of investment in any securities or other financial products based upon or derived from any Russell Index. Frank Russell Company is not the issuer of any such securities or other financial products and makes no express or implied warranties of merchantability or fitness for any particular purpose with respect to any Russell Index or any data included or reflected therein, nor as to results to be obtained by any person or any entity from the use of the Russell Index or any data included or reflected therein.

[9] NASDAQ(R), NASDAQ–100(R) and NASDAQ–100 Index(R) are registered trademarks of The NASDAQ OMX Group, Inc. (which with its affiliates are the "Corporations") and are licensed for use by Phlx in connection with the trading of options products based on the NASDAQ–100 Index(R). The options products have not been passed on by the Corporations as to their legality or suitability. The options products are not issued, endorsed, sold, or promoted by the Corporations. The Corporations make no warranties and bear no liability with respect to the options products.

Options Traders (on-floor) and Specialists (in Category II, Equity Option Fees) applicable to non-electronically delivered orders and titling those fees "Non-Electronically Delivered." The Exchange proposes to assess a $.25 per contract transaction charge on Registered Options Traders (on-floor) and Specialists for transactions resulting from an order that was non-electronically delivered. The Exchange also proposes to continue to assess Registered Options Traders (on-floor) and Specialists an options surcharge in RUT, RMN, MNX and NDX of .15 per contract for orders that are non-electronically delivered.

Currently, the equity options transaction charge applicable to Registered Options Traders (on-floor) and Specialists is subject to a $650,000 monthly Cap ("Monthly Cap"). The options transaction charges for electronically delivered Penny and non-Penny Pilot options classes applicable to Registered Options Traders (on-floor) and Specialists are proposed to be subject to the Monthly Cap. The non-electronically delivered options transaction charge will also be subject to the Monthly Cap.

Finally, the Exchange proposes to amend the Professional equity options fee by adding the words "per contract" after the $.20 fee. These words were inadvertently omitted from a previous filing.[10]

While changes to the Exchange's Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated this proposal to be operative for trades settling on or after May 3, 2010.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(4) of the Act[12] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members.

The Exchange believes that its proposal to categorize orders as electronically and non-electronically delivered is consistent with the statute. First, it is consistent with our long-standing Fee Schedule which has been amended from time to time. The Exchange has categorized its broker-dealer transaction charges in a similar manner since 2006.[13] The Exchange has two different methods of handling orders. The non-electronic model is one that is represented on the trading floor by a floor broker. An electronic order is an entirely different model. Those orders are entered by members who are connected to the Phlx XL II system. These members are assessed different rates because the Exchange operates two different models, a floor-based model and an electronic model, which both utilize different processes. The Exchange believes that it is appropriate to charge each model differently.

Second, NYSE Arca, Inc. ("NYSE Arca") and The Chicago Board of Options Exchange, Inc. ("CBOE") also distinguish between electronically and non-electronically delivered orders. Specifically, NYSE Arca categorizes its transaction fees as either electronic or manual for its broker-dealer, customer and firm order types.[14] NYSE Arca assesses broker-dealers, customers and firm proprietary transactions a different rate for manual and electronic orders. CBOE assesses broker-dealers who enter manual orders a different rate as compared to broker-dealers who enter electronic orders.[15] CBOE assesses electronically executed broker-dealer orders a transaction charge of $.45 and manually executed broker-dealer orders a transaction charge of $.25.

The Exchange believes that assessing different transaction fees for electronic and non-electronic orders is reasonable because the method of handling differs and because the fees are consistent with other fees assessed by the Exchange. The Exchange also believes that these fees are equitably allocated because the fees are uniformly applied to all similarly situated ROTs and Specialists. While the Exchange is assessing different fees for orders that are electronically delivered and non-electronically delivered, for ROTs and Specialists, these charges are subject to the Monthly Cap[16] which is the same for both methods of delivery. As previously cited, other exchanges distinguish between delivery methods for certain market participants and charge different fees depending on the method of delivery. This type of distinction is not novel and has long existed within the industry. While the Exchange may be the first to make this distinction with respect to ROTs and Specialists, other exchanges have distinguished between delivery methods as to certain market participants and not others and charged different rates depending on the delivery method.

In addition, the Exchange believes that assessing Registered Options Traders (on-floor) and Specialists a $.22 per contract transaction charge for options that are trading in the Penny Pilot and increasing the current $.22 per contract options transaction charge to $.23 per contract for non-Penny Pilot options orders that are electronically delivered is consistent with other fees in the Fee Schedule. The Exchange currently makes a similar distinction in its Payment for Order Flow Fees[17] and also in its Routing Fees.[18]

Other exchanges also make a similar distinction in pricing equity options. Both NYSE Arca and CBOE distinguish between Penny and Non-Penny Pilot fees and assess different rates for Penny and Non-Penny Pilot options depending on whether the orders were electronically or non-electronically delivered. NYSE Arca distinguishes pricing in Penny Pilot options from its pricing for Standard Executions (Standard Executions include all executions in non-Penny Pilot issues and all manual executions in Penny)[19] Pilot issues.[20] Likewise CBOE assesses a Marketing Fee that differentiates Penny Pilot Classes from non-Penny Pilot Classes.[21]

The Exchange believes that assessing options transaction charges for Penny Pilot and Non-Penny Pilot options with different rates is consistent with fees assessed in the options industry. The proposed rule change is equitable and

[10] *See* Securities Exchange Act Release No. 61905 (April 14, 2010), 75 FR 20871 (April 21, 2010) (SR–Phlx–2010–55).

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4).

[13] *See* Securities Exchange Act Release No. 54423 (September 11, 2006), 71 FR 54701 (September 18, 2006) (SR–Phlx–2006–54) (originally AUTOM-delivered and non-AUTOM-delivered, the Exchange amended its electronic/non-electronic distinction for broker-dealer to create a single fee of $.25 for non-AUTOM-delivered orders (now known as Non-Electronically-Delivered) and a $.45 transaction fee for AUTOM-delivered orders (now known as Electronically Delivered orders). AUTOM was the Exchange's electronic delivery, routing, execution and reporting system which provided [sic]

[14] *See* NYSE Arca's Fee Schedule. *See also* Securities Exchange Act Release Nos. 60379 (July 23, 2009), 74 FR 38244 (July 31, 2009) (SR–NYSEARca–2009–62); 61894 (April 13, 2010), 75 FR 20413 (April 19, 2010) (SR–NYSEArca–2010–24).

[15] *See* CBOE's Fees Schedule. *See also* Securities Exchange Act Release No. 55677 (April 27, 2007), 72 FR 26430 (May 9, 2007) (SR–Phlx–2007–32).

[16] The Monthly Cap is currently $650,000.

[17] *See* Securities Exchange Act Release Act No. 59841 (April 29, 2009), 74 FR 21035 (May 6, 2009) (SR–Phlx–2009–38).

[18] *See* Securities Exchange Act Release Act No. 61664 (March 5, 2010), 75 FR 11957 (March 12, 2010) (SR–Phlx–2010–32).

[19] *See* NYSE Arca's Fee Schedule.

[20] *See* NYSE Arca's Fee Schedule. *See also* Securities Exchange Act Release Nos. 60379 (July 23, 2009), 74 FR 38244 (July 31, 2009) (SR–NYSEArca–2009–62); 61894 (April 13, 2010), 75 FR 20413 (April 19, 2010) (SR–NYSEArca–2010–24).

[21] *See* CBOE's Fees Schedule. *See also* Securities Exchange Act Release No. 57094 (January 3, 2008), 73 FR 1653 (January 9, 2008) (SR–CBOE–2007–154).

reasonable because it applies uniformly to all similarly situated ROTs and Specialists. Additionally the different rates that are assessed for electronically delivered Penny and Non-Penny Pilot transactions and non-electronically delivered Penny and Non-Penny Pilot transactions are equitable because the rates are uniformly applied to similarly situated users. The fees are reasonable because they are within the range of fees assessed by the Exchange.

The degree of difference between the rates charged for different order types is the result of competitive forces in the marketplace and reflects certain competitive differences amongst market participants. The Exchange believes that the fees it charges for equity options remain competitive with fees charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [22] and Rule 19b–4(f)(2) [23] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2010–66 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2010–66. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Phlx–2010–66 and should be submitted on or before June 7, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2010–11649 Filed 5–14–10; 8:45 am]

BILLING CODE 8010–01–P

[22] 15 U.S.C. 78s(b)(3).

[23] 17 CFR 240.19b–4(f)(2).

[24] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7009]

Culturally Significant Objects Imported for Exhibition Determinations: "The Holocaust (Warsaw Ghetto)"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the documents to be included in the exhibition "The Holocaust (Warsaw Ghetto)," imported from abroad for temporary exhibition within the United States, are of cultural significance. The documents are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the documents at the U.S. Holocaust Memorial Museum, Washington, DC, from on or about June 2010 until on or about June 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202/632–6473). The address is U.S. Department of State, SA–5, L/PD, Fifth Floor, Washington, DC 20522–0505.

Dated: May 5, 2010.

Maura M. Pally,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2010–11719 Filed 5–14–10; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7010]

Notice of Meeting

Title: Shipping Coordinating Committee; Notice of Committee Meeting.

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 am on Friday, May 28,

2010, in Room 1303 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the sixtieth Session of the International Maritime Organization (IMO) Technical Cooperation Committee to be held at the IMO headquarters in London, United Kingdom, from June 1–3, 2010.

The primary matters to be considered include:

—Adoption of the agenda
—Work of other bodies and organizations
—Integrated Technical Co-operation Programme: Biennial report on 2008–2009
—Financing the Integrated Technical Co-operation Programme
—Partnerships for progress
—Voluntary IMO Member State Audit Scheme
—Programme on the integration of women in the maritime sector
—Institutional development and fellowships
—Linkage between the Integrated Technical Co-operation Programme and the Millennium Development Goals
—Work programme
—Any other business
—Election of the Chairman and Vice-Chairman for 2011
—Consideration of the report of the Committee

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, LCDR Jason Smith, by e-mail at *jason.e.smith2@uscg.mil,* by phone at (202) 372–1376, by fax at (202) 372–1925, or in writing at Commandant (CG–52), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *www.uscg.mil/imo.*

This announcement might appear in the **Federal Register** less than 15 days prior to the meeting. The Department of State finds that there is an exceptional circumstance in that this advisory committee meeting must be held on May 28 in order to prepare for the IMO Technical Cooperation Committee meeting, convening in London on June 1st.

Dated: May 11, 2010.

Jon Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2010–11717 Filed 5–14–10; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 7011]

Shipping Coordinating Committee; Notice of Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Friday, May 28, 2010, in Room 1303 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the one hundred and fourth Session of the International Maritime Organization (IMO) Council to be held at the IMO headquarters in London, United Kingdom, from June 7–11, 2010.

The primary matters to be considered include:

—Report of the Secretary-General on credentials.
—Strategy and planning.
—Organizational reforms.
—Resource management:
—Voluntary IMO Member State Audit Scheme.
—Consideration of the report of the Marine Environment Protection Committee.
—Consideration of the report of the Maritime Safety Committee.
—Consideration of the report of the Technical Co-operation Committee.
—Technical Co-operation Fund: Report on activities of the 2008–2009 programme.
—Report on the 2010 International Conference on the revision of the HNS Convention.
—World Maritime University:
—IMO International Maritime Law Institute:
—Protection of vital shipping lanes.
—External relations:
—Report on the status of the Convention and membership of the Organization.
—Report on the status of conventions and other multilateral instruments in respect of which the Organization performs functions.
—Place and date of the next session of the Council.

Members of the public may attend this meeting up to the seating capacity of the room. To facilitate the building security process and to request reasonable accommodation, those who plan to attend should contact the meeting coordinator, LCDR Jason Smith, by e-mail at *jason.e.smith2@uscg.mil,* by phone at (202) 372–1376, by fax at (202) 372–1925, or in writing at Commandant (CG–52), U.S. Coast Guard, 2100 2nd Street, SW., Stop 7126, Washington, DC 20593–7126. Please note that due to security considerations, two valid, government issued photo identifications must be presented to gain entrance to the Headquarters building. The Headquarters building is accessible by taxi and privately owned conveyance (public transportation is not generally available). However, parking in the vicinity of the building is extremely limited. Additional information regarding this and other IMO SHC public meetings may be found at: *http://www.uscg.mil/imo.*

This announcement might appear in the **Federal Register** less than 15 days prior to the meeting. The Department of State finds that there is an exceptional circumstance in that this advisory committee meeting must be held on May 28, in order to prepare for the IMO Council, convening in London on June 7.

Dated: May 11, 2010.

Jon Trent Warner,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 2010–11721 Filed 5–14–10; 8:45 am]

BILLING CODE 4710–09–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. USTR–2010–0013]

WTO Dispute Settlement Proceeding Regarding United States—Measures Affecting the Production and Sale of Clove Cigarettes

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is providing notice that on April 8, 2010, the United States received from Indonesia a letter requesting consultations under the Marrakesh Agreement Establishing the World Trade Organization ("WTO Agreement") regarding a provision of the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) that prohibits the production or sale in the United States of cigarettes containing certain additives, including clove. This

request may be found at *http://www.wto.org* in a document designated as WT/DS406/1. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before June 16, 2010 to be assured of timely consideration by USTR.

ADDRESSES: Public comments should be submitted electronically to *http://www.regulations.gov,* docket number USTR–2010–0013. If you are unable to provide submissions to *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission. If (as explained below), the comment contains confidential information, then the comment should be submitted by fax only to Sandy McKinzy at (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Richard Chriss, Chief Agriculture Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3150.

SUPPLEMENTARY INFORMATION: USTR is providing notice that consultations have been requested pursuant to the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within nine months after it is established.

Major Issues Raised by Indonesia

On April 8, 2010, USTR received a letter from Indonesia requesting consultations regarding a provision of the Family Smoking Prevention and Tobacco Control Act (Pub. L. 111–31) (the "Act"), which was signed into law June 22, 2009. Indonesia alleges that, among other things, the Act bans the production or sale in the United States of cigarettes containing certain additives, including clove, but would continue to permit the production and sale of other cigarettes, including cigarettes containing menthol, beginning 90 days after the legislation was signed into law. Indonesia appears to allege that this provision of the Act are inconsistent with the General Agreement on Tariffs and Trade 1994, Articles III:4 and XX; the Agreement on the Application of Sanitary and Phytosanitary Measures, Articles 2, 3, 5 and 7; and the Agreement on Technical Barriers to Trade, Articles 2 and 12.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in this dispute. Persons may submit public comments electronically to *http://www.regulations.gov* docket number USTR–2010–0013. If you are unable to provide submissions by *http://www.regulations.gov,* please contact Sandy McKinzy at (202) 395–9483 to arrange for an alternative method of transmission.

To submit comments via *http://www.regulations.gov,* enter docket number USTR–2010–0013 on the home page and click "search". The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting "Notice" under "Document Type" on the left side of the search-results page, and click on the link entitled "Submit a Comment." (For further information on using the *http://www.regulations.gov* Web site, please consult the resources provided on the Web site by clicking on "How to Use This Site" on the left side of the home page.)

The *http://www.regulations.gov* site provides the option of providing comments by filing in a "Type Comment and Upload File" field, or by attaching a document. It is expected that most comments will be provided in an attached document. If a document is attached, it is necessary and sufficient to type "See attached" in the "Type Comment and Upload File" field.

A person requesting that information contained in a document submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the submitter. Confidential business information must be clearly designated as such and the submission must be marked "BUSINESS CONFIDENTIAL" at the top and bottom of the cover page and each succeeding page. Any comment containing business confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

Information or advice contained in a comment submitted, other than business confidential information, must be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as "SUBMITTED IN CONFIDENCE" at the top and bottom of the cover page and each succeeding page; and

(3) Must provide a non-confidential summary of the information or advice.

Any comment containing confidential information must be submitted by fax to Sandy McKinzy at (202) 395–3640. A non-confidential summary of the confidential information must be submitted to *http://www.regulations.gov.* The non-confidential summary will be placed in the docket and open to public inspection.

USTR will maintain a docket on this dispute settlement proceeding, accessible to the public. The public file will include non-confidential comments received by USTR from the public with respect to the dispute. If a dispute settlement panel is convened or in the event of an appeal from such a panel, the U.S. submissions, any non-confidential submissions, or non-confidential summaries of submissions, received from other participants in the dispute, will be made available to the public on USTR's Web site at *http://www.ustr.gov,* and the report of the panel, and, if applicable, the report of the Appellate Body, will be available on the Web site of the World Trade Organization, *http://www.wto.org.*

Comments will be placed in the docket and open to public inspection pursuant to 15 CFR 2006.13, except confidential business information exempt from public inspection in accordance with 19 U.S.C. 2155(g)(2). Comments open to public inspection may be viewed on the *http://www.regulations.gov* Web site.

Steven F. Fabry,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 2010–11614 Filed 5–14–10; 8:45 am]

BILLING CODE 3190–WO–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 26, 2010. No comments were received.

DATES: Comments must be submitted on or before June 16, 2010.

FOR FURTHER INFORMATION CONTACT: Thomas M.P. Christensen, Maritime Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590. *Telephone:* 202–366- 5909; or *e-mail: tom.christensen@dot.gov.* Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Voluntary Tanker Agreement.

OMB Control Number: 2133–0505.

Type of Request: Extension of currently approved collection.

Affected Public: U.S.-flag and U.S. citizen-owned vessels that are required to respond under current statute and regulation.

Form (s): None.

Abstract: This collection of information is used to gather information regarding the location of U.S.-flag vessels and certain other U.S. citizen-owned vessels for the purpose of search and rescue in the saving of lives at sea and for the marshalling of ships for national defense and safety purposes. This collection consists of vessels that transmit their positions through various electronic means.

Annual Estimated Burden Hours: 15 hours.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: MARAD Desk Officer.

Comments Are Invited On: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed 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 collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Authority: 49 CFR 1.66.

Issued in Washington, DC on May 11, 2010.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 2010–11703 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2009–0322]

Qualification of Drivers; Exemption Applications; Diabetes Mellitus

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt fifty-three individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: *Effective date:* The exemptions are effective May 17, 2010. Expiration date: The exemptions expire on Thursday, May 17, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Room W64–224, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at: *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* and/or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://www.regulations.gov.*

Background

On March 22, 2010, FMCSA published a Notice of receipt of Federal diabetes exemption applications from fifty-three individuals and requested comments from the public (75 FR 13647). The public comment period closed on April 21, 2010, and one comment was received.

FMCSA has evaluated the eligibility of the fifty-three applicants and determined that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some drivers with ITDM to operate CMVs is feasible. The September 3, 2003 (68 FR 52441) **Federal Register** Notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These fifty-three applicants have had ITDM over a range of 1 to 53 years. These applicants report no

hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage his/her diabetes mellitus, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the March 22, 2010 **Federal Register** Notice, and they will not be repeated in this Notice.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologists' medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that in each case exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document and they include the following: (1) That each individual submit a quarterly monitoring checklist completed by the treating endocrinologist as well as an annual checklist with a comprehensive medical evaluation; (2) that each individual reports within 2 business days of occurrence, all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; also, any involvement in an accident or any other adverse event in a CMV or personal vehicle, whether or not it is related to an episode of hypoglycemia; (3) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (4) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was considered and discussed below.

The Pennsylvania Department of Transportation stated that it had reviewed the driving records for Dale J. Cleaver, Edgar R. Pole and Wayne F. Richards and was in favor of granting a Federal diabetes exemption to each of these individuals.

Conclusion

Based upon its evaluation of the fifty-three exemption applications, FMCSA exempts Deanna R. Alvarado, Howard H. Armstrong, Samuel D. Bentle, Mark S. Boettcher, Steven C. Boudreau, Charles Boulware, Jr., Roy L. Brokaw, Chris D. Chambers, Charles A. Cinert, Sr., John D. Clark, IV, Dale J. Cleaver, James H. Collins, William A. Donais, Lance L. Fuller, Johnny Gardner, Jr., Gregory S. Ghent, Mark D. Golden, Nathaniel W. Gorham, Younge W. Hooper, Eugene H. Johannes, Reginald K. Johnson, Sheldon R. Koehn, David L. Kreitzer, Jason R. Kropp, Joseph A. Laperle, David W. Letto, Robert D. Marquart, Francis E. Martinez, Stephen A. Miles, Raymond A. Montoya, Adolfo Moreno, Jr., Chad D. Morrison, Kevin R. Murphy, Kenneth S. Napieralski, Lowell G. Neumann, John T. Oliver, Jr., Steven G. Petersen, Edgar R. Polk, Damian J. Porter, Robert W. Prabucki, Edward R. Ramm, Wayne F. Richards, George H. Rollins, Jo Ellen Roshak, Gary G. Sironen, Rodney L. Stoltenberg, David Switala, Stanley C. Tarvidas, Jim D. Thomas, Florence E. Thompson, Joshua C. Thompson, Phillip M. Vinson and Camella C. Wilkins from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31136(e) and 31315 each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: May 5, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–11706 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From Certain Terms, Conditions, Reservations and Restrictions of a Quitclaim Deed Agreement Between the Hillsborough County Aviation Authority and the Federal Aviation Administration for the Tampa International Airport, Tampa, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties 5.88 acres at the Tampa International Airport, Tampa, FL from certain conditions, reservations, and restrictions as contained in a Quitclaim Deed agreement between the FAA and the Hillsborough County Aviation Authority, dated November 5, 1947. The release of property will allow the Hillsborough County Aviation Authority to use property for other than aeronautical purposes. The property is located in the southeast quadrant of Tampa International Airport property, Hillsborough County, Florida. The parcel is currently designated as aeronautical use. The property will be used for nonaeronautical use/revenue generation. The fair market value of the property has been determined by appraisal to be $2,690,000. The airport will receive at least fair market rental value for the property. Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Tampa International Airport and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal

obligation to use certain airport land for nonaeronautical purposes.

DATES: Comments are due on or before June 16, 2010.

ADDRESSES: Documents are available for review at the Tampa International Airport, and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Rebecca R. Henry, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

FOR FURTHER INFORMATION CONTACT: Rebecca R. Henry, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 2010–11718 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee (ATMAC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/ Industry Air Traffic Management Advisory Committee (ATMAC).

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Government/Industry Air Traffic Management Advisory Committee (ATMAC).

DATES: The meeting will be held June 3, 2010, from 10 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at Bessie Coleman Room, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org. METRO: L'Enfant Plaza Station (Use 7th & Maryland Exit).*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the Air Traffic Management Advisory Committee meeting. The agenda will include:

- Opening Plenary (Welcome and Introductions);
- Trajectory Operations (TOps) Work Group Presentation of Document, including Recommendations, for ATMAC Discussion, Approval, and possible Next Steps;
- NextGen Implementation Work Group (NGIWG) Report, Discussion, and possible Next Steps;
- ADS–B Work Group Presentation of Legacy ADS–B Equipment Paper for ATMAC Discussion, Approval, and possible Next Steps;
- FAA National Special Activity Airspace Program (NSAAP) Presentation Requested by Requirements and Planning Work Group, Airspace Work Group; precursor to future ATMAC Action Item;
- ATMAC Process Improvement Ad Hoc Group Presentation of Recommendations for ATMAC Discussion and Approval;
- ATMAC Membership for 2010–2011 Term;
- Closing Plenary (Other Business, Adjourn).

Note: Please arrive in the FAA lobby by 9:30 a.m. to allow ample time for security and check in procedures.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FUTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 10, 2010.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. 2010–11720 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In April 2010, there were seven applications approved. This notice also includes information on one application, approved in March 2010, inadvertently left off the March 2010 notice. Additionally, 12 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Birmingham Airport Authority, Birmingham, Alabama.

Application Number: 10–08–C–00–BHM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $7,310,680.

Earliest Charge Effective Date: July 1, 2010.

Estimated Charge Expiration Date: October 1, 2011.

Class of Air Carriers Not Required To Collect PFC's:

Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Birmingham—Shuttlesworth International Airport.

Brief Description of Projects Approved for Collection and Use:

Acquire noise impacted land.

Acquire environmentally impacted land.

Security enhancements.

Terminal preconstruction services.

Brief Description of Project Approved for Collection:

Terminal demolition.

Decision Date: March 31, 2010.

FOR FURTHER INFORMATION CONTACT: Kevin Morgan, Jackson Airports District Office, (601) 664–9891.

Public Agency: City of Portland, Maine.

Application Number: 10–05–C–00–PWM.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $132,206,104.

Earliest Charge Effective Date: November 1, 2010.

Estimated Charge Expiration Date: April 1, 2040.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on information submitted in the public

agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Portland International Jetport.

Brief Description of Projects Approved for Collection and Use:

Terminal building expansion.

Passenger boarding bridges.

Roadway realignment.

Decision Date: April 12, 2010.

FOR FURTHER INFORMATION CONTACT: Priscilla Scott, New England Region Airports Division, (781) 238–7614.

Public Agency: Monterey Peninsula Airport District, Monterey, California.

Application Number: 10–15–C–00–MRY.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $975,000.

Earliest Charge Effective Date: August 1, 2010.

Estimated Charge Expiration Date: August 1, 2011.

Class of Air Carriers Not Required To Collect PFC's:

Nonscheduled/on-demand air carriers filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Monterey Peninsula Airport.

Brief Description of Projects Approved for Collection and Use:

Airport access improvements—phase II.

Flight information display system and access information equipment—phase II.

Wildlife hazard assessment.

Brief Description of Projects Approved for Collection:

Runway IOR/28L safety area design—phase I.

Runway 1OR/28L safety area construction—phase I.

Decision Date: April 16, 2010.

FOR FURTHER INFORMATION CONTACT: Gretchen Kelly, San Francisco Airports District Office, (650) 876–2778, extension 623.

Public Agency: Port Authority of New York and New Jersey, New York, New York.

Application Number: 09–06–U–00–EWR.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue Approved for Use in This Decision: $19,733,400.

Charge Effective Date: April 1, 2006.

Estimated Charge Expiration Date: March 1, 2011.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use at Newark Liberty International Airport (EWR) at a $4.50 PFC Level:

Upgrade navigational aids, runways 22R and 22L.

Upgrade navigational aids, runway 4L.

Improvements to runway safety areas.

Brief Description of Project Approved for Use at LaGuardia Airport (LGA) at a $3.00 PFC Level: Central terminal building modernization planning and engineering.

Brief Description of Withdrawn Project: Construction of taxiway A connector.

Date of Withdrawal: April 16, 2010.

Decision Date: April 26, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew Brooks, New York Airports District Office, (516) 227–3816.

Public Agency: Port Authority of New York and New Jersey, New York, New York.

Application Number: 09–06–U–00–JFK.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue Approved for Use in This Decision: $22,549,200.

Charge Effective Date: April 1, 2006.

Estimated Charge Expiration Date: March 1, 2011.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use at EWR at a $4.50 PFC Level:

Upgrade navigational aids, runways 22R and 22L.

Upgrade navigational aids, runway 4L.

Improvements to runway safety areas.

Brief Description of Project Approved for Use at LGA at a $3.00 PFC Level: Central terminal building modernization planning and engineering.

Brief Description of Withdrawn Project: Construction of taxiway A connector.

Date of Withdrawal: April 16, 2010.

Decision Date: April 26, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew Brooks, New York Airports District Office, (516) 227–3816.

Public Agency: Port Authority of New York and New Jersey, New York, New York.

Application Number: 09–06–U–00–LGA.

Application Type: Use PFC revenue.

PFC Level: $4.50.

Total PFC Revenue Approved for Use in This Decision: $14,717,400.

Charge Effective Date: April 1, 2006.

Estimated Charge Expiration Date: March 1,2011.

Class of Air Carriers Not Required to Collect PFC's: No change from previous decision.

Brief Description of Projects Approved for Use at EWR at a $4.50 PFC Level:

Upgrade navigational aids, runways 22R and 22L.

Upgrade navigational aids, runway 4L.

Improvements to runway safety areas.

Brief Description of Project Approved for Use at LGA at a $3.00 Pfc Level: Central terminal building modernization planning and engineering.

Brief Description of Withdrawn Project: Construction of taxiway A connector.

Date of Withdrawal: April 16, 2010.

Decision Date: April 26, 2010.

FOR FURTHER INFORMATION CONTACT: Andrew Brooks, New York Airports District Office, (516) 227–3816.

Public Agency: Peninsula Airport Commission, Newport News, Virginia.

Application Number: 10–02–C–00–PHF.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $18,910,908.

Earliest Charge Effective Date: July 1, 2010.

Estimated Charge Expiration Date: March 1, 2020.

Classes of Air Carriers Not Required To Collect PFC's:

(1) Air carriers operating under part 135 on an on-demand, non scheduled, whole plane charter basis and not selling tickets to individual passengers; (2) air carriers operating under part 298 on an on-demand, non scheduled, whole plane charter basis and not selling tickets to individual passengers.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that each proposed class accounts for less than 1 percent of the total annual enplanements at Newport News/Williamsburg International Airport.

Brief Description of Projects Approved for Collection and Use:

Runway 7/25 rehabilitation (design and construction).

Runway 25 runway safety area.

Airport signage.

Terminal concourse design/construction.

Obstruction removal.

PFC application development.

Terminal concourse jet bridges (four).

Airport master plan update.

Terminal building rehabilitation and public circulation improvements.

Flight information display system/baggage information display system/gate information display system.
Airside sweeper.
Wildlife mitigation.
PFC program administration.
Airfield lighting upgrade.
Operations/security vehicle.
Federal inspection services finish.
Aircraft rescue and firefighting vehicle.

Brief Description of Projects Approved for Collection:

Rehabilitate taxiways A, B, and C (design).
Snow removal equipment/maintenance facility (design and construction).
Rehabilitate taxiways A, B, and C (construction).

Decision Date: April 26, 2010.

FOR FURTHER INFORMATION CONTACT: Jeffrey Breeden, Washington Airports District Office, (703) 661–1363.

Public Agency: Horry County Department of Airports, Myrtle Beach, South Carolina.

Application Number: 10–04–C–00–MYR.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $104,020,700.

Earliest Charge Effective Date: June 1, 2010.

Estimated Charge Expiration Date: January 1, 2032.

Class of Air Carriers Not Required To Collect PFC's:

Nonscheduled/on-demand air carriers, filing FAA Form 1800–31.

Determination: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Myrtle Beach International Airport.

Brief Description of Projects Approved for Collection and Use:

Terminal capacity enhancement program (TCEP)—terminal facility.
TCEP—airfield improvements.
TCEP—airport roads.

Decision Date: April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Anna Guss, Atlanta Airports District Office, (404) 305–7146.

AMENDMENTS TO PFC APPROVALS

Amendment No., city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
99–03–C–O1–CIC, Chico, CA	04/01/10	$25,000	$19,822	02/01/01	02/01/01
06–07–C–00–DBQ, Dubuque, IA	04/06/10	153,046	49,761	11/01/06	11/01/06
06–08–C–02–DBQ, Dubuque, IA	04/06/10	288,718	246,105	03/01/08	03/01/08
94–01–C–01–SLK, Saranac Lake, NY	04/07/10	121,952	120,749	09/01/07	09/01/07
97–07–C–01–OAK, Oakland, CA	04/12/10	33,011,496	23,825,854	06/01/99	06/01/99
99–08–C–01–OAK, Oakland, CA	04/12/10	12,251,844	11,737,121	07/01/00	07/01/00
00–09–C–02–OAK, Oakland, CA	04/12/10	33,380,000	17,394,806	02/01/03	02/01/03
01–10–C–02–OAK, Oakland, CA	04/12/10	32,000,000	20,640,754	09/01/03	09/01/03
02–11–C–01–OAK, Oakland, CA	04/12/10	7,000,000	5,402,257	12/01/03	12/01/03
02–06–C–09–MSY, New Orleans, LA	04/15/10	271,336,494	287,977,095	09/01/18	12/01/19
09–10–C–01–MSY, New Orleans, LA	04/15/10	70,531,906	52,805,580	08/01/26	06/01/26
02–02–C–01–RDD, Redding, CA	04/19/10	1,251,567	1,124,987	07/10/07	04/01/07

Issued in Washington, DC on May 7, 2010.

Joe Hebert,

Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 2010–11470 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–5748; FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2000–8398; FMCSA–2003–15892; FMCSA–2003–16564; FMCSA–2005–23099; FMCSA–2005–23238; FMCSA–2005–22194; FMCSA–2005–22727; FMCSA–2006–23773]

Qualification of Drivers; Exemption Renewals; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 31 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the Agency to renew exemptions at the end of the 2-year period. The comment period ended on April 21, 2010 (75 FR 13653).

Discussion of Comments

FMCSA received one comment in this proceeding. The comment was in favor of the Federal vision exemption program.

Conclusion

The Agency has not received any adverse evidence on any of these drivers that indicates that safety is being compromised. Based upon its evaluation of the 31 renewal applications, FMCSA renews the

Federal vision exemptions for Scott E. Ames, Otto J. Ammer, Jr., Nick D. Bacon, Mark A. Baisden, Eric D. Bennett, Johnny W. Bradford, Sr., Levi A. Brown, Charlie F. Cook, Clifford H. Dovel, Arthur L. Fields, John W. Forgy, Glenn E. Gee, Rupert G. Gilmore, III, Albert L. Gschwind, Walter R. Hardiman, Michael W. Jones, Matthew J. Konecki, Paul E. Lindon, John K. Love, Jack D. Miller, Eric M. Moats, Sr., Robert W. Nicks, Joseph S. Nix, IV, Monte L. Purciful, Luis F. Saavedra, Earl W. Sheets, Robert V. Sloan, Steven L. Valley, Thomas E. Voyles, Jr., Darel G. Wagner and Bernard J. Wood.

In accordance with 49 U.S.C. 31136(e) and 31315, each renewal exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

Issued on: May 4, 2010.

Larry W. Minor

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–11708 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5748; FMCSA–2001–11426; FMCSA–2002–11714; FMCSA–2008–0021]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 12 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective May 30, 2010. Comments must be received on or before June 16, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1999–5748; FMCSA–2001–11426; FMCSA–2002–11714; FMCSA–2008–0021, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 12 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 12 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Guy M. Alloway, Joe W. Brewer, James D. Coates, Donald D. Dunphy, James W. Ellis, IV, John E. Engstad, David A. Inman, Lawrence C. Moody, Stanley W. Nunn, Bobby C. Spencer, Kevin R. Stoner, Marion E. Terry.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with

the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 12 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 40404; 64 FR 66962; 67 FR 10475; 69 FR 26206; 71 FR 26601; 73 FR 27017; 67 FR 10471; 67 FR 19798; 69 FR 19611; 71 FR 26601; 67 FR 15662; 67 FR 37907; 69 FR 26206; 71 FR 26601; 73 FR 15567; 73 FR 27015). Each of these 12 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 16, 2010.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 12 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its Notices of applications. The Notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 4, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–11711 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2001–10578; FMCSA–2001–11426; FMCSA–2005–22727; FMCSA–2005–23099; FMCSA–2005–23238; FMCSA–2006–23773; FMCSA–2006–24015; FMCSA–2007–0071; FMCSA–2008–0021]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 18 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective May 25, 2010. Comments must be received on or before June 16, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1999–6156; FMCSA–1999–6480; FMCSA–2001–10578; FMCSA–2001–11426; FMCSA–2005–22727; FMCSA–2005–23099; FMCSA–2005–23238; FMCSA–2006–23773; FMCSA–2006–24015; FMCSA–2007–0071; FMCSA–2008–0021, using any of the following methods.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA,

Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 18 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 18 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: Paul D. Crouch, John M. Doney, Curtis N. Fulbright, Joshua G. Hansen, Daniel W. Henderson, Edward W. Hosier, Craig T. Jorgensen, Jose A. Lopez, Earl E. Martin, Bobby L. Mashburn, Brian E. Monaghan, William P. Murphy, Roy J. Oltman, Albert L. Remsburg, III, Antonio A. Ribeiro, Justin T. Richman, Darwin J. Thomas, and Frankie A. Wilborn.

These exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provides a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 18 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 54948; 65 FR 159; 66 FR 66969; 68 FR 69432; 71 FR 644; 73 FR 27014; 64 FR 68195; 65 FR 20251; 67 FR 17102; 69 FR 17267; 71 FR 16410; 66 FR 53826; 66 FR 66966; 67 FR 10471; 67 FR 19798; 69 FR 19611; 71 FR 19604; 70 FR 71884; 71 FR 4632; 71 FR 4194; 71 FR 13450; 71 FR 5105; 71 FR 19600; 71 FR 6826; 71 FR 19602; 71 FR 14566; 71 FR 30227; 73 FR 6242; 73 FR 1695073 FR 15567; 73 FR 27015). Each of these 18 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 16, 2010.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 18 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 4, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–11713 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–1999–5578; FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–7363; FMCSA–2004–17195; FMCSA–2006–23773]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 21 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained

without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective June 3, 2010. Comments must be received on or before June 16, 2010.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–1999–5578; FMCSA–1999–6480; FMCSA–2000–7006; FMCSA–2000–7165; FMCSA–2000–7363; FMCSA–2004–17195; FMCSA–2006–23773, using any of the following methods.

- *Federal eRulemaking Portal: Go to http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov,* including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476). This information is also available at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This Notice addresses 21 individuals who have requested renewal of their exemptions in accordance with FMCSA procedures. FMCSA has evaluated these 21 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are: James C. Askin, Paul J. Bannon, Ernie E. Black, Ronnie F. Bowman, Gary O. Brady, Stephen H. Goldcamp, Steven F. Grass, Wai F. King, Dennis E. Krone, Richard J. McKenzie, Jr., Christopher J. Meerten, Craig W. Miller, William J. Miller, Robert J. Mohorter, James A. Mohr, Roderick F. Peterson, Tommy L. Ray, Jr., George S. Rayson, Donald W. Sidwell, Elmer K. Thomas, and Raul R. Torres.

The exemptions are extended subject to the following conditions: (1) That each individual has a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provides a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retains a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two-year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 21 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 27027; 64 FR 51568; 66 FR 63289; 69 FR 8260; 71 FR 16410; 73 FR 78186; 64 FR 68195; 65 FR 20251; 67 FR 38311; 69 FR 26921; 71 FR 27033; 67 FR 17102; 69 FR 17267; 71 FR 16410; 65 FR 20245; 65 FR 57230; 65 FR 33406; 65 FR 45817; 65 FR 77066; 68 FR 1654; 70 FR 7545; 73 FR 11989; 69 FR 17263; 69 FR 31447; 71 FR 6826; 71 FR 19602). Each of these 21 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 16, 2010.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then

requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published Notices of final disposition announcing its decision to exempt these 21 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was made on the merits of each case and made only after careful consideration of the comments received to its Notices of applications. The Notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all, of these drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 5, 2010.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. 2010–11705 Filed 5–14–10; 8:45 am]

BILLING CODE 4910–EX–P

UNITED STATES INSTITUTE OF PEACE

Announcement of the Fall 2010 Annual Grant Competition Effective October 1, 2010

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its Annual Grant Competition, which offers support for research, education and training, and the dissemination of information on international peace and conflict resolution. The Annual Grant Competition is open to any project that falls within the Institute's broad mandate of international conflict resolution.

Deadline: October 1, 2010.

Online application available: *http://www.usip.org/grants-fellowships/annual-grant-competition*.

DATES: Submission of Application: October 1, 2010.

Notification Date: March 31, 2011.

ADDRESSES: United States Institute of Peace, Grant Program, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 833–1018 (fax), (202) 457–1719 (TTY), email: *grants@usip.org*.

FOR FURTHER INFORMATION CONTACT: The Grant Program, Annual Grant Competition, Phone (202) 429–3842, *email: grants@usip.org*.

Dated: May 11, 2010.

Michael Graham,

Vice President for Management.

[FR Doc. 2010–11576 Filed 5–14–10; 8:45 am]

BILLING CODE 6820–AR–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the Priority Grant Competition for Immediate Release

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its ongoing Priority Grant Competition. The Priority Grant Competition focuses on countries and topics as they relate to USIP's mandate. The Priority Grant Competition is restricted to projects that fit the themes identified for each priority area.

Starting October 1, the Priority Grant Competition will focus on five countries and one topic.

- Afghanistan.
- Iran.
- Iraq.
- Pakistan.
- Sudan.
- Communication for Peacebuilding.

The specific themes for each priority area may be found at our Web site at: *http://www.usip.org/grants-fellowships/priority-grant-competition.*

Deadline: The Priority Grant Competition applications are accepted throughout the year and awards are announced throughout the year. Please visit our Web site at: *http://www.usip.org/grants-fellowships/priority-grant-competition* for specific information on the competition as well as instructions about how to apply.

ADDRESSES: If you are unable to access our Web site, you may submit an inquiry to: United States Institute of Peace, Grant Program, Priority Grant Competition, 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011. (202) 429–3842 (phone) (202) 833–1018 (fax) (202) 457–1719 (TTY) *E-mail: grants@usip.org.*

FOR FURTHER INFORMATION CONTACT: The Grant Program, Phone (202) 429–3842. *E-mail: grants@usip.org.*

Dated: May 11, 2010.

Michael Graham,

Vice President for Management.

[FR Doc. 2010–11575 Filed 5–14–10; 8:45 am]

BILLING CODE 6820–AR–M

Federal Register

Monday,
May 17, 2010

Part II

The President

Notice of May 13, 2010—Continuation of the National Emergency With Respect to Burma

Federal Register
Vol. 75, No. 94
Monday, May 17, 2010

Presidential Documents

Title 3—

The President

Notice of May 13, 2010

Continuation of the National Emergency With Respect to Burma

On May 20, 1997, the President issued Executive Order 13047, certifying to the Congress under section 570(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208), that the Government of Burma had committed large-scale repression of the democratic opposition in Burma after September 30, 1996, thereby invoking the prohibition on new investment in Burma by United States persons contained in that section. The President also declared a national emergency to deal with the threat posed to the national security and foreign policy of the United States by the actions and policies of the Government of Burma, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq*.

Because the actions and policies of the Government of Burma continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on May 20, 1997, and the measures adopted on that date, on July 28, 2003, in Executive Order 13310, on October 18, 2007, in Executive Order 13448, and on April 30, 2008, in Executive Order 13464 to deal with that emergency, must continue in effect beyond May 20, 2010. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Burma. This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
May 13, 2010.

[FR Doc. 2010–11945
Filed 5–14–10; 11:15 am]
Billing code 3195–W0–P

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LIST OF PUBLIC LAWS

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S. 1963/P.L. 111–163
Caregivers and Veterans Omnibus Health Services Act of 2010 (May 5, 2010; 124 Stat. 1130)
Last List May 4, 2010

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