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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, February 22, 2011
9 a.m.–12:30 p.m.

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 76, No. 25
Monday, February 7, 2011

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1152; Directorate Identifier 2009–CE–026–AD; Amendment 39–16589; AD 2011–03–05]

RIN 2120–AA64

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

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

ACTION: Final rule.

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

The TC Holder received from operators, whose fleets are operated in demanding operating-conditions and with very frequent Short Take-Off and Landing (STOL) operations, reports of cracks located in the web of fuselage frame 19. On 05 February 2007, EASA issued Airworthiness Directive (AD) 2007–0028 which mandated Alert Service Bulletin (ASB) 228–266 and required an inspection of the frame 19 on all Dornier 228 aeroplanes. In addition, the TC Holder also initiated a flight-test campaign including strain measurements as well as finite element modelling and fatigue analyses to better understand the stress distribution onto the frame 19 and the associated structural components.

The results of these investigations confirmed that STOL operations diminish extensively the fatigue life of the frame 19.

Fuselage frame 19 supports the rear attachment of the Main Landing Gear (MLG). This condition, if not corrected, could cause rupture of frame 19, leading to subsequent collapse of a MLG.

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

DATES: This AD becomes effective March 14, 2011.

On March 14, 2011, the Director of the Federal Register approved the incorporation by reference of Dornier 228 Time Limits/Maintenance Checks Manual, Temporary Revision No. 05–27, dated August 4, 2008, listed in this AD.

As of June 26, 2007 (72 FR 28591, May 22, 2007), the Director of the Federal Register approved the incorporation by reference of RUAG Alert Service Bulletin No. ASB–228–266, dated December 1, 2006, listed in this AD.

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

For service information identified in this AD, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Germany; *telephone:* + 49 (0) 8153–302280; *fax:* + 49 (0) 8153–303030. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

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

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 18, 2010 (75 FR 70623), and proposed to supersede AD 2007–11–03, Amendment 39–15060 (72 FR 28591; May 22, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

The TC Holder received from operators, whose fleets are operated in demanding operating-conditions and with very frequent Short Take-Off and Landing (STOL) operations, reports of cracks located in the web of fuselage frame 19. On 05 February 2007, EASA issued Airworthiness Directive (AD) 2007–0028 which mandated Alert Service Bulletin (ASB) 228–266 and required an inspection of the frame 19 on all Dornier 228 aeroplanes. In addition, the TC Holder also initiated a flight-test campaign including strain measurements as well as finite element modelling and fatigue analyses to better understand the stress distribution onto the frame 19 and the associated structural components.

The results of these investigations confirmed that STOL operations diminish extensively the fatigue life of the frame 19.

Fuselage frame 19 supports the rear attachment of the Main Landing Gear (MLG). This condition, if not corrected, could cause rupture of frame 19, leading to subsequent collapse of a MLG.

For the reasons described above, this new AD requires installation of reinforcements and butt straps on frame 19 at the lower part of the fuselage for aeroplanes used in operations where this frame may be subject to high stress and recurring inspections of that frame for all aeroplanes.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 17 products of U.S. registry. We also estimate that it will take about 6 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.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $8,670 or $510 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15060 (72 FR 28591; May 22, 2007) and adding the following new AD:

2011–03–05 Dornier Luftfahrt GmbH: Amendment 39–16589; Docket No. FAA–2010–1152; Directorate Identifier 2009–CE–026–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 14, 2011.

Affected ADs

(b) This AD supersedes AD 2007–11–03, Amendment 39–15060.

Applicability

(c) This AD applies to Dornier Luftfahrt GmbH Model Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 airplanes, all serial numbers, that are certificated in any category.

Subject

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

Reason

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

The TC Holder received from operators, whose fleets are operated in demanding operating-conditions and with very frequent Short Take-Off and Landing (STOL) operations, reports of cracks located in the web of fuselage frame 19. On 05 February 2007, EASA issued Airworthiness Directive (AD) 2007–0028 which mandated Alert Service Bulletin (ASB) 228–266 and required an inspection of the frame 19 on all Dornier 228 aeroplanes. In addition, the TC Holder also initiated a flight-test campaign including strain measurements as well as finite element modelling and fatigue analyses to better understand the stress distribution onto the frame 19 and the associated structural components.

The results of these investigations confirmed that STOL operations diminish extensively the fatigue life of the frame 19.

Fuselage frame 19 supports the rear attachment of the Main Landing Gear (MLG). This condition, if not corrected, could cause rupture of frame 19, leading to subsequent collapse of a MLG.

For the reasons described above, this new AD requires installation of reinforcements and butt straps on frame 19 at the lower part of the fuselage for aeroplanes used in operations where this frame may be subject to high stress and recurring inspections of that frame for all aeroplanes.

Actions and Compliance

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

(1) For all airplanes, within 25 hours time-in-service (TIS) after June 26, 2007 (the effective date of AD 2007–11–03), visually inspect the affected fuselage frame 19 using the instructions in Dornier 228 RUAG Alert Service Bulletin No. ASB–228–266, dated December 1, 2006.

(2) If any crack is found during the inspection required in paragraph (f)(1) of this AD, before further flight, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Germany; *telephone:* +49–(0)8153–30–2280; *fax:* +49–(0)8153–30–3030; *e-mail: customersupport.dornier228@ruag.com* for FAA-approved repair instructions and incorporate the repair on the airplane.

(3) After accomplishment of paragraph (f)(1) or (f)(2) of this AD, as applicable, repetitively thereafter do Structural Significant Item (SSI) Task No. 53.37 of Structure Inspection Program of Dornier 228 Time Limits/Maintenance Checks Manual, Temporary Revision No. 05–27, dated August 4, 2008, at intervals not to exceed 2,400 landings or 72 months, whichever occurs first.

(g) If the number of landings is unknown, calculate the compliance times of landings in this AD by using hours TIS. Multiply the number of hours TIS by 0.8 to come up with the number of landings. For the purpose of this AD:

(1) 800 landings equals 1,000 hours TIS; and

(2) 1,600 landings equals 2,000 hours TIS.

FAA AD Differences

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

(1) The MCAI requires different compliance times for airplanes operated in different conditions. The FAA is not able to enforce compliance times based on airplane operations since there is no way of determining the amount of operations in different conditions. To ensure the unsafe condition is addressed adequately and timely, we are requiring the inspection for all airplanes following a guideline combining number of landings and life limits.

(2) The service information allows flight with known cracks provided they do not exceed a certain limit. FAA policy does not allow flight with cracks in primary structure. Since the fuselage is considered primary structure, we are mandating repair before further flight after any crack is found.

Other FAA AD Provisions

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

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

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

(3) *Reporting Requirements:* For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(i) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2009–0085, dated April 14, 2009; RUAG Alert Service Bulletin No. ASB–228–266, dated December 1, 2006; and Dornier 228 Time Limits/Maintenance Checks Manual, Temporary Revision No. 05–27, dated August 4, 2008, for related information. For service information related to this AD, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Germany; *telephone:* + 49 (0) 8153–302280; *fax:* + 49 (0) 8153–303030. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

Material Incorporated by Reference

(h) You must use RUAG Alert Service Bulletin No. ASB–228–266, dated December 1, 2006; and Dornier 228 Time Limits/Maintenance Checks Manual, Temporary Revision No. 05–27, dated August 4, 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 Dornier 228 Time Limits/Maintenance Checks Manual, Temporary Revision No. 05–27, dated August 4, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On June 26, 2007 (72 FR 28591, May 22, 2007), the Director of the Federal Register previously approved the incorporation by reference of RUAG Alert Service Bulletin No. ASB–228–266, dated December 1, 2006.

(3) For service information identified in this AD, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Germany; *telephone:* + 49 (0) 8153–302280; *fax:* + 49 (0) 8153–303030.

(4) You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

(5) 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 January 25, 2011.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2006 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1186; Directorate Identifier 2009–CE–065–AD; Amendment 39–16588; AD 2011–03–04]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company (Type Certificate Previously Held by Columbia Aircraft Manufacturing (Previously the Lancair Company)) Models LC40–550FG, LC41–550FG, and LC42–550FG Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) for the products listed above. AD 2009–09–09 currently requires repetitive inspections of the rudder hinges and the rudder hinge brackets for damage, i.e., cracking, deformation, and discoloration. If damage is found during any inspection, AD 2009–09–09 also requires replacing the damaged rudder hinge and/or rudder hinge bracket. This new AD retains the inspection requirements of AD 2009–09–09, adds airplanes to the Applicability section, and adds a terminating action for the repetitive inspection requirements. This AD resulted from the manufacturer developing a modification that terminates the repetitive inspections and from the manufacture adding airplane serial numbers into the Applicability section. We are issuing this AD to detect and correct damage in the rudder hinges and the rudder hinge brackets, which could result in failure of the rudder. This failure could lead to loss of control.

DATES: This AD is effective March 14, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 14, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 11, 2009 (74 FR 19873, April 30, 2009).

ADDRESSES: For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706; Wichita, Kansas 67277; *telephone:* (316) 517–5800; *fax:* (316) 942–9006; *Internet: http://www.cessna.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

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 (*phone:* 800–647–5527) is 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: Gary Park, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946–4123; *fax:* (316) 946–4107; *e-mail: gary.park@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2009–09–09, Amendment 39–15895 (74 FR 19873, April 30, 2009). That AD applies to the specified products. The SNPRM published in the **Federal Register** on October 27, 2010 (75 FR 66009). That SNPRM proposed to retain the inspection requirements of AD 2009–09–09, add airplanes to the Applicability section, and add a terminating action for the repetitive inspection requirements using revised service information.

Comments

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

Conclusion

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

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

Costs of Compliance

We estimate that this proposed AD affects 790 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspecting the rudder hinges and rudder hinge brackets for damage with rudder removed (affects 570 airplanes).	1.5 work-hours × $85 per hour = $127.50 per inspection cycle.	Not applicable	$127.50 per inspection cycle.	$72,675 per inspection cycle.
Inspecting the rudder hinges and rudder hinge brackets for damage without rudder removed (affects 570 airplanes).	.5 work-hour × $85 per hour = $42.50 per inspection cycle.	Not applicable	$42.50 per inspection cycle.	$24,225 per inspection cycle.
Incorporating the modification kit for Models LC40–550FG and LC42–550FG airplanes (affects 247 airplanes).	1 work-hour × $85 per hour = $85	$739	$824	$203,528.
Incorporating the modification kit for Model LC41–550FG airplanes (affects 523 airplanes).	1 work-hour × $85 per hour = $85	$848	$933	$487,959.
Inspecting the rudder hinge and the rudder brackets attachment hardware for correct thread engagement (affects 20 airplanes).	.5 work-hour × $85 per hour = $42.50.	Not applicable	$42.50	$850.
Inspecting the rudder travel (affects 20 airplanes).	1 work-hour × $85 per hour = $85	Not applicable	$85	$1,700.

We estimate the following costs to do any necessary repairs that will be required based on the results of the inspection of the rudder hinge and the rudder brackets attachment hardware for correct thread engagement and the rudder travel. We have no way of determining the number of aircraft that might need these repairs:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Repair the rudder hinge and the rudder brackets attachment hardware thread engagement (could affect 20 airplanes).	.5 work-hour × $85 per hour = $42.50.	$14	$56.50
Repair the rudder travel (could affect 20 airplanes)	.5 work-hour × $85 per hour = $42.50.	14	56.50

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),

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2009–09–09, Amendment 39–15895 (74 FR 19873, April 30, 2009), and adding the following new AD:

2011–03–04 Cessna Aircraft Company (Type Certificate Previously Held by Columbia Aircraft Manufacturing (Previously The Lancair Company)): Amendment 39–16588; Docket No. FAA–2009–1186; Directorate Identifier 2009–CE–065–AD.

Effective Date

(a) This airworthiness directive (AD) is effective March 14, 2011.

Affected ADs

(b) This AD supersedes AD 2009–09–09, Amendment 39–15895.

Applicability

(c) This AD applies to the following Cessna Aircraft Company (type certificate previously held by Columbia Aircraft Manufacturing (previously The Lancair Company)) airplane models and serial numbers that are certificated in any category:

GROUP 1 AIRPLANES

Model	Serial Nos.
LC40–550FG (300)	40001, 40002, and 40004 through 40079.
LC41–550FG (400)	41001 through 41569, 41571 through 41800, 411001 through 411087, 411089 through 411110, 411112 through 411138, 411140, 411142, and 411147.
LC42–550FG (350)	42001 through 42009, 42011 through 42558, 42560 through 42569, 421001 through 421013, 421015 through 421017, and 421019.

GROUP 2 AIRPLANES

Model	Serial Nos.
LC41–550FG (400)	41570, 411088, 411111, 411139, 411141, 411143 through 411146, and 411148 through 411153.
LC42–550FG (350)	42010, 42559, 421014, 421018, and 421020.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 55, Stabilizers.

Unsafe Condition

(e) This AD is the result of reports received of a cracked lower rudder hinge bracket on two of the affected airplanes. We are issuing this AD to detect and correct damage, i.e., cracking, deformation, and discoloration, in the rudder hinges and the rudder hinge brackets, which could result in failure of the rudder. This failure could lead to loss of control.

Compliance

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

(1) *For Group 1 airplanes specified in paragraph (c) of this AD:* Using the compliance times specified in table 1 of this AD, inspect the rudder hinges and rudder hinge brackets for damage, *i.e.,* cracking, deformation, and discoloration. Do the inspections following Cessna Single Engine Service Bulletin SB09–27–01, dated April 13, 2009; Cessna Single Engine Service Bulletin SB09–27–01, Revision 2, dated November 23, 2009; or Cessna Single Engine Service Bulletin SB09–27–01, Revision 3, dated July 20, 2010.

TABLE 1—INSPECTION COMPLIANCE TIMES

Condition	Initially inspect . . .	Repetitively inspect . . .
(i) For airplanes with 25 hours time-in-service (TIS) or more as of May 11, 2009 (the effective date of AD 2009–09–09).	With the rudder removed and using 10X visual magnification, inspect all three rudder hinges and rudder hinge brackets at whichever of the following occurs first (A) Within the next 10 hours TIS after May 11, 2009 (the effective date of AD 2009–09–09); or (B) Within the next 30 days after May 11, 2009 (the effective date of AD 009–09–09).	Thereafter inspect as follows until the modification required in paragraph (f)(5) of this AD is done: (A) Every 25 hours TIS or 3 months, whichever occurs first, without removing the rudder, visually inspect all three rudder hinges and rudder hinge brackets; and (B) Every 50 hours TIS or 6 months, whichever occurs first, with the rudder removed and using 10X visual magnification, inspect all three rudder hinges and rudder hinge brackets.
(ii) For airplanes with less than 25 hours TIS as of May 11, 2009 (the effective date of AD 2009–09–09).	Without removing the rudder, visually inspect all three rudder hinges and rudder hinge brackets, at whichever of the following occurs later. (A) Upon accumulating 25 hours TIS; or (B) Within the next 10 hours TIS after May 11, 2009 (the effective date of AD 2009–09–09).	Thereafter inspect as follows until the modification required in paragraph (f)(5) of this AD is done: (A) Every 25 hours TIS or 3 months, whichever occurs first, without removing the rudder, visually inspect all three rudder hinges and rudder hinge brackets; and (B) Every 50 hours TIS or 6 months, whichever occurs first, with the rudder removed and using 10X visual magnification, inspect all three rudder hinges and rudder hinge brackets.

(2) *For Group 1 airplanes specified in paragraph (c) of this AD:* Before further flight after any inspection required in paragraphs (f)(1)(i) or (f)(1)(ii) of this AD in which damage is found on any of the rudder hinges and/or rudder hinge brackets, incorporate Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009; or Cessna Single Engine Modification Kit MK400–27–01A dated July 20, 2010, as specified in Cessna Single Engine Service Bulletin SB09–27–01, Revision 2, dated November 23, 2009; and Cessna Single Engine Service Bulletin SB09–27–01, Revision 3, dated July 20, 2010. Incorporating either Modification Kit MK400–27–01 or Modification Kit MK400–27–01A, terminates the repetitive inspections required in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(3) *For Group 1 airplanes specified in paragraph (c) of this AD:* If the repetitive inspections required in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD become due at the same time, credit for both inspections will be given by doing the rudder removal and 10X visual inspection.

(4) *For Group 1 airplanes specified in paragraph (c) of this AD:* Within the next 24 months after March 14, 2011 (the effective date of this AD), incorporate Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009; or Cessna Single Engine Modification Kit MK400–27–01A, dated July 20, 2010, as specified in Cessna Single Engine Service Bulletin SB09–27–01, Revision 2, dated November 23, 2009; and Cessna Single Engine Service Bulletin SB09–27–01, Revision 3, dated July 20, 2010, unless already done as specified in paragraph (f)(2) of this AD. Incorporating either Modification Kit MK400–27–01 or Modification Kit MK400–27–01A, terminates the repetitive inspections required in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(5) *For Group 1 airplanes specified in paragraph (c) of this AD:* At any time after the initial inspections required in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, as long as no damage is found, and no later than the compliance time specified in paragraph (f)(4) of this AD, you may incorporate Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009; or Cessna Single Engine Modification Kit MK400–27–01A, dated July 20, 2010, as specified in Cessna Single Engine Service Bulletin SB09–27–01, Revision 2, dated November 23, 2009; and Cessna Single Engine Service Bulletin SB09–27–01, Revision 3, dated July 20, 2010, to terminate the repetitive inspections required in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD.

(6) *For any Group 1 airplane with Cessna Single Engine Service Bulletin SB09–27–01, Revision 1, dated August 31, 2009, already incorporated and for all Group 2 airplanes:* Within the next 30 days after March 14, 2011 (the effective date of this AD), inspect for proper rudder hinge and rudder bracket hardware thread engagement and inspect the rudder travel. Do these inspections following the Accomplishment Instructions in Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009; or the Accomplishment Instructions in Cessna Single Engine Modification Kit MK400–27–01A, dated July 20, 2010.

(i) Before further flight after the inspection required in paragraph (f)(6) of this AD, if any discrepancies are found in the rudder hinge or rudder bracket hardware, replace the affected hardware. Do the replacements following the Accomplishment Instructions in Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009; or the Accomplishment Instructions in Cessna Single Engine Modification Kit MK400–27–01A, dated July 20, 2010.

(ii) Before further flight after the inspection required in paragraph (f)(6) of this AD, if the rudder travel is outside the limits specified in the Accomplishment Instructions in Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009; or the Accomplishment Instructions in Cessna Single Engine Modification Kit MK400–27–01A, dated July 20, 2010, reinstall the rudder following the Accomplishment Instructions in either Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009; or Cessna Single Engine Modification Kit MK400–27–01A, dated July 20, 2010.

(iii) After the inspection and any necessary corrective actions required in paragraphs (f)(6), (f)(6)(i), and (f)(6)(ii) of this AD, no further action is required.

Credit for Actions Accomplished in Accordance With Previous Service Information

(g) *For all airplanes specified in paragraph (c) of this AD:* As of March 14, 2011 (the effective date of this AD), if Cessna Single Engine Service Bulletin SB09–27–01, Revision 2, dated November 23, 2009, has already been incorporated, no further action is required.

Alternative Methods of Compliance (AMOCs)

(h)(1) 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. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your Principal Maintenance Inspector or Principal Avionics Inspector, as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

(3) AMOCs approved for AD 2009–09–09 are approved for this AD.

Related Information

(i) For more information about this AD, contact Gary Park, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; *telephone:* (316) 946–4123; *fax:* (316) 946–4107; *e-mail: gary.park@faa.gov.*

Material Incorporated by Reference

(j) You must use Cessna Single Engine Service Bulletin SB09–27–01, dated April 13, 2009; Cessna Single Engine Service Bulletin SB09–27–01, Revision 2, dated November 23, 2009; Cessna Single Engine Service Bulletin SB09–27–01, Revision 3, dated July 20, 2010;

Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009; and Cessna Single Engine Modification Kit MK400–27–01A, dated July 20, 2010, 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 Cessna Single Engine Service Bulletin SB09–27–01, Revision 2, dated November 23, 2009; and Cessna Single Engine Service Bulletin SB09–27–01, Revision 3, dated July 20, 2010; Cessna Single Engine Modification Kit MK400–27–01, dated November 23, 2009; and Cessna Single Engine Modification Kit MK400–27–01A, dated July 20, 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Cessna Single Engine Service Bulletin SB09–27–01, dated April 13, 2009, on May 11, 2009 (74 FR 19873, April 30, 2009).

(3) For service information identified in this AD, contact Cessna Aircraft Company, Product Support, P.O. Box 7706; Wichita, Kansas 67277; *telephone:* (316) 517–5800; *fax:* (316) 942–9006; *Internet: http://www.cessna.com.*

(4) You may review copies of the service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call 816–329–4148.

(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 an NARA facility, 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 January 25, 2011.

John Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2008 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0761; Directorate Identifier 2010–NM–069–AD; Amendment 39–16598; AD 2011–03–14]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires installing two warning level indicator lights on the P2–2 center instrument panel in the flight compartment for certain airplanes. For a certain other airplane, this AD requires activating the cabin altitude warning and takeoff configuration warning lights. For all airplanes, this AD also requires revising the airplane flight manual to remove certain requirements included by previous AD actions, requires new pressure altitude limitations for certain airplanes, and advises the flightcrew of the following changes: revised emergency procedures to use when a cabin altitude warning or rapid depressurization occurs, and revised cabin pressurization procedures for normal operations. This AD was prompted by a design change in the cabin altitude warning system that would address the identified unsafe condition. We are issuing this AD to prevent failure of the flightcrew to recognize and react properly to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body), and consequent loss of control of the airplane.

DATES: This AD is effective March 14, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of March 14, 2011.

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.* You may review copies of the referenced 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.

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 (phone: 800–647–5527) is 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: Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: (425) 917–6472; fax: (425) 917–6590; e-mail: *Jeffrey.W.Palmer@faa.gov.*

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 the specified products. That NPRM published in the **Federal Register** on August 11, 2010 (75 FR 48620). That NPRM proposed to require installing two warning level indicator lights on the P2–2 center instrument panel in the flight compartment for certain airplanes. For a certain other airplane, that NPRM proposed to require activating the cabin altitude warning and takeoff configuration warning lights. For all airplanes, that NPRM proposed to also require revising the airplane flight manual (AFM) to remove certain requirements included by previous AD actions, to require new pressure altitude limitations for certain airplanes, and to advise the flightcrew of the following changes: revised emergency procedures to use when a cabin altitude warning or rapid depressurization occurs, and revised cabin pressurization procedures for normal operations.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Support for the NPRM

The Air Line Pilots Association, International supports the proposed AD.

Request to Delay Rule Pending Additional Service Information

Lufthansa requested that the FAA consider the release of Boeing Service Bulletin 737–21–1164 before releasing the AD. Lufthansa stated that Boeing has recommended that operators consider doing the modifications specified in Boeing Service Bulletin 737–21–1164 and Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010, at the same time, because both modifications require access to the same area of the airplane and extensive airplane downtime. However, Lufthansa pointed

out that Boeing Service Bulletin 737–21–1164 has not yet been published; therefore, releasing the AD before Boeing Service Bulletin 737–21–1164 is released would require operators to accomplish the modifications separately, doubling the time and cost of the modifications.

We do not agree to delay this AD pending release of an unrelated service bulletin. Accomplishment of Boeing Service Bulletin 737–21–1164 installs a second 10,000-foot cabin altitude pressure switch, which is not related to the unsafe condition identified by this AD. To delay this action until the manufacturer can release a planned service bulletin would be inappropriate, since we have determined that an unsafe condition exists and that the required actions must be accomplished to ensure continued safety. Once the planned service bulletin is developed, approved, and available, we might consider additional rulemaking. However, under the provisions of paragraph (l) of the final rule, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the change would provide an acceptable level of safety. We have not changed this AD in this regard.

Request To Revise the Proposed Costs of Compliance

Continental Airlines (Continental) stated that the estimated costs of compliance for doing the modification are significantly low for the following reasons:

- Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010, specifies an estimate of 32.5 work-hours to do the modification. Continental declared that it has historically found that Boeing estimates given in service bulletins are unachievable. Continental believed it would be possible to accomplish the modification in approximately 50 work hours, if the modification is done during a heavy maintenance visit.
- If the proposed compliance time remains 36 months, Continental asserted that some airplanes will have to be modified on "special holds" and the added cost would be significant because there is much more access, close-up, and testing necessary. Continental estimates that airplanes modified while on "special holds" will require 120 work hours, and that cost of lost revenue while the airplane is out of service for 5 days would be $220,000 per airplane.
- Continental stated that the FAA did not account for material costs, and pointed out that Boeing Service Bulletin 737–31A1325, dated January 11, 2010, lists a kit that costs $2,738 and is required for each airplane.

From these statements, we infer that Continental is requesting that we revise the proposed estimated costs for accomplishing the modification specified in paragraph (g) of the proposed AD. We do not agree. In establishing the requirements of all ADs, we do consider cost impact to operators beyond the estimates of parts and labor costs contained in AD preambles. For example, where safety considerations allow, we attempt to set compliance times that generally coincide with operators' maintenance schedules. However, because operators' schedules vary substantially, we cannot accommodate every operator's optimal scheduling in each AD. Each AD does allow individual operators to obtain approval for extensions of compliance times, based on a showing that the extension will not affect safety adversely. Therefore, we do not consider it appropriate to attribute to the AD the costs associated with the type of special scheduling that might otherwise be required.

Furthermore, we do not consider it appropriate to attribute the costs associated with aircraft "down time" to the AD. Normally, compliance with the AD will not necessitate any additional down time beyond that of a regularly scheduled maintenance hold. Even if additional down time is necessary for some airplanes in some cases, we do not have sufficient information to evaluate the number of airplanes that may be so affected or the amount of additional down time that may be required. Therefore, we are unable to estimate such costs.

Additionally, we point out that Boeing service bulletins generally include task hours necessary to do only the change for each airplane, excluding lost time. Boeing, in service bulletins, also specifically advises operators to adjust the task-hour estimates with operator task-hour data, if necessary.

We have not changed the AD in this regard.

Request To Extend Proposed Compliance Time

Continental recommended that the proposed compliance time of 36 months for installing warning indicator lights should be extended to 60 months, which would fall during a heavy maintenance visit. Continental asserted that it operates 37 Model 737–500 airplanes that would be affected by the NPRM, and that modifying all of these airplanes within 36 months would impose an undue economic burden.

We do not agree with Continental's request to extend the compliance time. We recognize that in some cases, it might be necessary for operators to accomplish the requirements of the AD outside of normal scheduled maintenance cycles. However, in developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition, and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. Based on the available data, we have determined that a compliance time of 36 months is the longest compliance time we can allow that would provide an adequate level of safety. However, under the provisions of paragraph (l) of the final rule, we will consider requests for approval of an extension of the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have not changed the AD in this regard.

Request To Add Baseline Maximum Takeoff/Landing Altitude for Model 737–100 and –200 Airplanes

Boeing requested that we consider adding a baseline maximum takeoff and landing altitude of 8,300 feet for Model 737–100 and –200 airplanes. Boeing pointed out that the NPRM contains an 8,400-foot pressure altitude as a function of the baseline maximum takeoff and landing altitude for the Model 737–300, –400, and –500 airplanes. Therefore, Boeing contended that the new baseline maximum takeoff and landing altitude should be added for the Model 737–100 and –200 airplanes to avoid confusion.

We do not agree to add a baseline maximum takeoff and landing altitude of 8,300 feet for Model 737–100 and –200 airplanes. We have verified that there are no Model 737–100 or –200 airplanes with high-altitude deviations approved between 8,300 and 8,400 feet. Therefore, the statement in paragraph (i)(1)(ii) of this AD accurately considers all Model 737 Classic airplanes as appropriate. We have not changed this AD in this regard.

Request To Revise AFM Requirement Specified in Paragraph (i)(2)(i) of the NPRM

Boeing requested that we revise paragraph (i)(2)(i) of the NPRM to correct the title of the procedure that is to be deleted. Boeing asserted that the procedure title specified in paragraph (i)(2)(i) of the NPRM no longer exists, as

the title was changed according to FAA Alternative Method of Compliance (AMOC) Letter 130S–09–134a, dated April 28, 2009.

We partially agree. We do not agree to delete reference to the procedure titled "WARNING HORN—CABIN ALTITUDE OR CONFIGURATION," because all AFMs might not have been changed according to FAA AMOC Letter 130S–09–134a. Additionally, that procedure title is included in the existing requirements of AD 2006–13–13, and, therefore, it is necessary for this AD to refer to the procedure title specified in that AD. However, some AFMs have been revised according to FAA AMOC Letter 130S–09–134a; therefore, we agree to revise paragraph (i)(2)(i) of this AD to address airplanes with AFMs that have been revised according to FAA AMOC Letter 130S–09–134a.

Request To Revise AFM Terminology Specified in Paragraph (i)(2)(iv) of the NPRM

Boeing requested that we revise the AFM text proposed in paragraph (i)(2)(iv) of the NPRM to change "Descent" to "Rapid Descent." Boeing requested this change to clarify the proposed AFM wording.

We partially agree. We do agree to change "Descent" in the AFM text required by paragraph (i)(2)(iv) of this AD. We have determined that "Descent" is not the proper terminology to use in this AFM text. However, we do not agree to change "Descent" to "Rapid Descent," because that term is also not accurate. We have determined that the correct terminology is "Emergency Descent." Therefore, we have revised the AFM text required by paragraph (i)(2)(iv) of this AD to refer to "Emergency Descent."

Request To Revise AFM Requirement Specified in Paragraph (i)(2)(iv) of the NPRM

Boeing requested that we revise paragraph (i)(2)(iv) of the NPRM to add certain steps in the AFM text. Boeing asserted that this change is necessary to standardize the cabin altitude warning procedure across all Boeing airplane models.

We partially agree. We agree that the additional steps proposed by Boeing would be beneficial, add clarity and specificity, and contribute to standardization across Boeing airplane models. However, we do not agree that this AD should require these additional steps. Requiring these additional steps would alter the actions currently required by this AD, so additional rulemaking would be required. We have determined that the proposed AFM text is adequate, and that delaying this action would be inappropriate in light of the identified unsafe condition. However, because we agree that the additional steps would be beneficial, we have revised this AD to add a new paragraph (i)(2)(v) to include the additional steps as an option, so that operators may use the additional steps if they choose.

Request To Revise AFM Requirement Specified in Paragraph (i)(3)(ii) of the NPRM

Boeing requested that we revise paragraph (i)(3)(ii) of the NPRM to remove the requirement to add "For normal operations, the pressurization mode selector should be in AUTO prior to takeoff." Boeing pointed out that this step is already included in the "Boeing Preflight Procedures—First Officer."

We do not agree. We have determined that, because there is relevant accident history associated with incorrect setting of this specific switch, continued emphasis on the proper positioning of this switch prior to takeoff is necessary. Therefore, because this step is being eliminated by this AD, which terminates the requirements of AD 2006–13–13, this step must be added back into the AFM to emphasize the correct setting of this switch. We have not changed this AD in this regard.

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.

Costs of Compliance

We estimate that this AD will affect 741 airplanes of U.S. registry. We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Installation of warning indicator lights	20 work-hours × $85 per hour = $1,700.	$2,738	$4,438	$3,288,558
Activation of the cabin altitude warning system/takeoff configuration warning lights (one airplane).	1 work-hour × $85 per hour = $85 ..	0	85	85
AFM revision	1 work-hour × $85 per hour = $85 ..	0	85	62,985

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),

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

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 airworthiness directive (AD):

2011–03–14 The Boeing Company: Amendment 39–16598; Docket No. FAA–2010–0761; Directorate Identifier 2010–NM–069–AD.

Effective Date

(a) This AD is effective March 14, 2011.

Affected ADs

(b) This AD affects the ADs identified in paragraphs (b)(1), (b)(2), and (b)(3) of this AD. This AD does not supersede the requirements of these ADs.

(1) AD 2008–23–07, Amendment 39–15728.

(2) AD 2006–13–13, Amendment 39–14666.

(3) AD 2003–03–15 R1, Amendment 39–13366.

Applicability

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

(1) The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, as identified in Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010.

(2) The Boeing Company Model 737–400 series airplanes identified in Boeing Alert Service Bulletin 737–31A1398, dated January 7, 2010.

Subject

(d) Air Transport Association (ATA) of America Code 31: Instruments.

Unsafe Condition

(e) This AD results from a design change in the cabin altitude warning system that would address the identified unsafe condition. The Federal Aviation Administration is issuing this AD to prevent failure of the flightcrew to recognize and react properly to a valid cabin altitude warning horn, which could result in incapacitation of the flightcrew due to hypoxia (lack of oxygen in body) and consequent loss of control 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.

Installation of Warning Indicator Lights

(g) For airplanes identified in Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010: Within 36 months after the effective date of this AD, install two warning level indicator lights on the P2–2 center instrument panel in the flight compartment, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010.

Activation of Warning Indicator Lights

(h) For airplanes identified in Boeing Alert Service Bulletin 737–31A1398, dated January 7, 2010: Within 36 months after the effective date of this AD, activate the cabin altitude warning and takeoff configuration warning lights, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–31A1398, dated January 7, 2010.

Airplane Flight Manual (AFM) Revisions

(i) Before further flight after doing the installation or activation of the warning lights required by paragraph (g) or (h) of this AD, do the actions specified in paragraphs (i)(1), (i)(2), and (i)(3) of this AD.

(1) Revise the Limitations Section of the applicable Boeing 737 AFM by doing the actions specified in paragraphs (i)(1)(i) and (i)(1)(ii) of this AD.

(i) Delete the "CABIN ALTITUDE WARNING TAKEOFF BRIEFING" added by AD 2008–23–07.

(ii) Add the following statement. This may be done by inserting a copy of this AD into the applicable AFM.

"For airplanes approved for maximum takeoff and landing altitudes above 8,400 feet pressure altitude, change the limitation for Maximum Takeoff and Landing pressure altitude as follows: With the CABIN ALTITUDE and TAKEOFF CONFIG lights installed and operative on those airplanes without the High Altitude Landing switch installed, maximum takeoff and landing altitude is limited to 9,000 feet pressure altitude."

(2) Revise the Emergency Procedures Section of the applicable Boeing 737 AFM by doing the actions specified in paragraphs (i)(2)(i), (i)(2)(ii), (i)(2)(iii), and (i)(2)(iv) of this AD.

(i) Delete the procedure "WARNING HORN—CABIN ALTITUDE OR CONFIGURATION" added by AD 2006–13–13. If the title of this procedure has been changed according to FAA Alternative Method of Compliance AMOC Letter 130S–09–134a, dated April 28, 2009, delete the procedure approved according to that AMOC letter.

(ii) Delete the procedure entitled "CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION" added by AD 2003–03–15 R1 and modified by paragraph (g) of AD 2006–13–13.

(iii) If the procedure entitled "CABIN ALTITUDE (Airplanes with the CABIN ALTITUDE lights installed)" is currently contained in the applicable Boeing 737 AFM, delete the procedure entitled "CABIN ALTITUDE (Airplanes with the CABIN ALTITUDE lights installed)."

(iv) Add the following statement. This may be done by inserting a copy of this AD into the applicable AFM.

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION (required by AD 2011–03–14)

Condition: The CABIN ALTITUDE warning light illuminates or the intermittent warning horn sounds in flight above 10,000 ft MSL.

RECALL

Oxygen Masks and Regulators ON, 100%
Crew Communications ESTABLISH

REFERENCE

Pressurization Mode Selector MANUAL
Outflow Valve Switch CLOSE

If Cabin Altitude is uncontrollable:

Emergency Descent (If Required) INITIATE
Passenger Oxygen Switch ON"

(v) The following steps may be added to the AFM procedure specified by paragraph (i)(2)(iv) of this AD. These steps should be added following "Passenger Oxygen Switch * * * On."

"Thrust Levers CLOSE
Speed Brakes FLIGHT DETENT
Target Speed VMO/MMO"

(3) Revise the Normal Procedures Section of the applicable Boeing 737 AFM by doing the actions specified in paragraphs (i)(3)(i) and (i)(3)(ii) of this AD.

(i) Delete the "CABIN ALTITUDE WARNING TAKEOFF BRIEFING" procedure added by AD 2008–23–07.

(ii) Add the following statement. This may be done by inserting a copy of this AD into the applicable AFM.

"For normal operations, the pressurization mode selector should be in AUTO prior to takeoff. (Required by AD 2011–03–14)"

Note 1: When statements identical to those specified in paragraphs (i)(1)(ii), (i)(2)(iv), and (i)(3)(ii) of this AD have been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copies of this AD may be removed from the AFM.

Terminating Action for Affected ADs

(j) Accomplishment of the requirements of this AD terminates the specified requirements of the ADs identified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD, for only the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) AD 2008–23–07: All requirements of that AD.

(2) AD 2006–13–13: All requirements of that AD.

(3) AD 2003–03–15 R1: The requirements specified in paragraph (a), Table 2, and Figures 2 and 3 of that AD.

Special Flight Permit

(k) Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), are not allowed.

Alternative Methods of Compliance (AMOCs)

(l)(1) The Manager, Seattle 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: Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6472; fax (425) 917–6590. Information may be e-mailed 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, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

Related Information

(m) For more information about this AD, contact Jeffrey W. Palmer, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; phone: (425) 917–6472; fax: (425) 917–6590; e-mail: *Jeffrey.W.Palmer@faa.gov.*

Material Incorporated by Reference

(n) You must use Boeing Alert Service Bulletin 737–31A1325, dated January 11, 2010; or Boeing Alert Service Bulletin 737–31A1398, dated January 7, 2010; 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 the service information under 5 U.S.C. 552(a) and 1 CFR part 51.

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

(3) You may review copies of the service information 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 an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2435 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0954; Directorate Identifier 2010–NM–078–AD; Amendment 39–16596; AD 2011–03–12]

RIN 2120–AA64

Airworthiness Directives; Hawker Beechcraft Corporation (Type Certificate Previously Held by Raytheon Aircraft Company; Beech Aircraft Corporation) Model 400A and 400T Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires a detailed inspection for proper sealant of the left and right pylon firewall structures, and corrective actions if necessary. This AD results from reports of missing sealant on the left and right pylon firewall structures. We are issuing this AD to detect and correct missing sealant on the left and right pylon firewall structures, which, in the event of an engine fire, could result in flames penetrating the seams in the firewall between the engine and the aft fuselage, and a subsequent uncontrolled fire in the aft fuselage.

DATES: This AD is effective March 14, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 14, 2011.

ADDRESSES: For service information identified in this AD, contact Hawker Beechcraft Corporation, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085; telephone 316–676–8238; fax 316–676–6706; e-mail *tmdc@hawkerbeechcraft.com;* Internet *https://www.hawkerbeechcraft.com/service_support/pubs.* You may review copies of the referenced 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.

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 (phone: 800–647–5527) is 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: Thomas Teplik, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; phone: (316) 946–4196; fax: (316) 946–4107; e-mail: *Thomas.Teplik@faa.gov.*

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 the specified products. That NPRM was published in the **Federal Register** on October 1, 2010 (75 FR 60669). That NPRM proposed to require a detailed inspection for proper sealant of the left and right pylon firewall structures, and corrective actions if necessary.

Comments

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

Conclusion

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

- 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 165 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85	$0	$85	$14,025

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),

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

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 airworthiness directive (AD):

2011–03–12 Hawker Beechcraft Corporation (Type Certificate Previously Held by Raytheon Aircraft Company; Beech Aircraft Corporation): Amendment 39–16596; Docket No. FAA–2010–0954; Directorate Identifier 2010–NM–078–AD.

Effective Date

(a) This AD is effective March 14, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hawker Beechcraft Corporation (Type Certificate previously held by Raytheon Aircraft Company; Beech Aircraft Corporation) airplanes, certificated in any category; as identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model 400A airplanes having serial numbers RK–337 through RK–484, RK–486 through RK–570 inclusive, RK–572, RK–573, and RK–575 through RK–577 inclusive.

(2) Model 400T airplane having serial number TX–13.

Subject

(d) Air Transport Association (ATA) of America Code 54: Nacelles/Pylons.

Unsafe Condition

(e) This AD results from reports of missing sealant on the left and right pylon firewall structures. The Federal Aviation Administration is issuing this AD to detect and correct missing sealant on the left and right pylon firewall structures, which, in the event of an engine fire, could result in flames penetrating the seams in the firewall between the engine and the aft fuselage, and a subsequent uncontrolled fire in the aft fuselage.

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 and Corrective Action

(g) Within 200 flight hours or 12 months after the effective date of this AD, whichever occurs first: Do a detailed inspection for appropriate coverage of firewall sealant of the left and right pylon firewall structure, as specified in the figures of Hawker Beechcraft Mandatory Service Bulletin SB 54–3946, Revision 2, dated February 2010, and all applicable corrective actions; in accordance with the Accomplishment Instructions of Hawker Beechcraft Mandatory Service Bulletin SB 54–3946, Revision 2, dated February 2010. Do all applicable corrective actions before further flight.

Note 1: For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required."

Alternative Methods of Compliance (AMOCs)

(h)(1) 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: Thomas Teplik, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4196; fax (316) 946–4107.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

Related Information

(i) For more information about this AD, contact Thomas Teplik, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; phone: (316) 946–4196; fax: (316) 946–4107; e-mail: *Thomas.Teplik@faa.gov.*

Material Incorporated by Reference

(j) You must use Hawker Beechcraft Mandatory Service Bulletin SB 54–3946, Revision 2, dated February 2010, 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 Hawker Beechcraft Mandatory Service Bulletin SB 54–3946, Revision 2, dated February 2010, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Hawker Beechcraft Corporation, Department 62, P.O. Box 85,

Wichita, Kansas 67201–0085; telephone 316–676–8238; fax 316–676–6706; e-mail *tmdc@hawkerbeechcraft.com;* Internet *https://www.hawkerbeechcraft.com/service_support/pubs.*

(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 an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2442 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1043; Directorate Identifier 2010–NM–200–AD; Amendment 39–16593; AD 2011–03–09]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD requires installing new fire handle shutoff system wiring. This AD was prompted by a possible latent failure in the fire handle shutoff relay circuit due to a lack of separation between engine wires. We are issuing this AD to minimize the possibility of a multiple engine shutdown due to single fire handle activation.

DATES: This AD is effective March 14, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of March 14, 2011.

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.* You may review copies of the referenced 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.

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 (phone: 800–647–5527) is 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 S. Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: 562–627–5253; fax: 562–627–5210; e-mail: *William.Bond@faa.gov.*

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 the specified products. That NPRM published in the **Federal Register** on November 5, 2010 (75 FR 68245). That NPRM proposed to require installing new fire handle shutoff system wiring.

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.

Explanation of Change Made to the 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 and determined that air safety and the public interest require adopting the AD with the change described previously. We also determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

Costs of Compliance

We estimate that this AD will affect 25 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Wiring change	8 work-hours × $85 per hour = $680	$489	$1,169	$29,225

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),

(3) Will not affect intrastate aviation in Alaska, and

(4) 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.

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 airworthiness directive (AD):

2011–03–09 The Boeing Company: Amendment 39–16593; Docket No. FAA–2010–1043; Directorate Identifier 2010–NM–200–AD.

Effective Date

(a) This AD is effective March 14, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all The Boeing Company Model MD–90–30 airplanes, certificated in any category.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 74, Ignition.

Unsafe Condition

(e) This AD was prompted by a possible latent failure in the fire handle shutoff relay circuit due to a lack of separation between engine wires. We are proposing this AD to minimize the possibility of a multiple engine shutdown due to single fire handle activation.

Compliance

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

Wire Installation

(g) Within 4,200 flight hours after the effective date of this AD, install new fire handle shutoff system wiring, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–74A002, dated August 17, 2010.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

Related Information

(i) For more information about this AD, contact William S. Bond, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5253; fax: 562–627–5210; e-mail: *William.Bond@faa.gov.*

Material Incorporated by Reference

(j) You must use Boeing Alert Service Bulletin MD90–74A002, dated August 17, 2010, 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 Boeing Alert Service Bulletin MD90–74A002, dated August 17, 2010, 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 an NARA facility, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on January 26, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2428 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1108; Directorate Identifier 2010–NM–151–AD; Amendment 39–16592; AD 2011–03–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model CL–215–1A10 (CL–215), CL–215–6B11 (CL–215T Variant), and CL–215–6B11 (CL–415 Variant) 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:

Seven cases of on-ground hydraulic accumulator screw cap or end cap failure have been experienced * * * resulting in loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. * * *

* * * * *

A detailed analysis of the systems and structure in the potential line of trajectory of a failed screw cap/end cap for each accumulator has been conducted. It has identified that the worst-case scenarios would be impact damage to various components, potentially resulting in fuel spillage, uncommanded flap movement, or loss of aileron control [and consequent reduced controllability of the airplane].

* * * * *

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

DATES: This AD becomes effective March 14, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 14, 2011.

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 Mechanical Systems 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 November 9, 2010 (75 FR 68728). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Seven cases of on-ground hydraulic accumulator screw cap or end cap failure have been experienced on CL–600–2B19 (CRJ) aircraft, resulting in loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. To date, the lowest number of flight cycles accumulated at the time of failure has been 6991.
>
> Although there have been no failures to date on any CL–215–1A10 (CL–215) or CL–215–6B11 (CL–215T and CL–415) aircraft, similar accumulators, Part Number (P/N) 08–8423–010 (MS28700–3), to those installed on the CL–600–2B19, are installed on the aircraft listed in the Applicability section of this directive [MCAI].
>
> A detailed analysis of the systems and structure in the potential line of trajectory of a failed screw cap/end cap for each accumulator has been conducted. It has identified that the worst-case scenarios would be impact damage to various components, potentially resulting in fuel spillage, uncommanded flap movement, or loss of aileron control [and consequent reduced controllability of the airplane].
>
> This directive [MCAI] mandates repetitive [ultrasonic] inspections of the accumulators for cracks and replacement of any accumulator in which a crack is detected.

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.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 6 products of U.S. registry. We also estimate that it will take about 7 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. operators to be $3,570, or $595 per product.

In addition, we estimate that any necessary follow-on actions would take about 6 work-hours and require parts costing $4,055, for a cost of $4,565 per product. We have no way of determining the number of products that may need these actions.

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:

2011–03–08 Bombardier, Inc.: Amendment 39–16592. Docket No. FAA–2010–1108; Directorate Identifier 2010–NM–151–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 14, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD.

(1) Model CL–215–1A10 (CL–215) airplanes, serial numbers 1001 through 1990 inclusive;

(2) Model CL–215–6B11 (CL–215T Variant) airplanes, serial numbers 1056 through 1125 inclusive;

(3) Model CL–215–6B11 (CL–415 Variant) airplanes, serial numbers 2001 through 2990 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls; and 32: Landing gear.

Reason

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

Seven cases of on-ground hydraulic accumulator screw cap or end cap failure have been experienced * * * resulting in loss of the associated hydraulic system and high-energy impact damage to adjacent systems and structure. * * *

* * * * *

A detailed analysis of the systems and structure in the potential line of trajectory of a failed screw cap/end cap for each accumulator has been conducted. It has identified that the worst-case scenarios would be impact damage to various components, potentially resulting in fuel spillage, uncommanded flap movement, or loss of aileron control [and consequent reduced controllability 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.

Inspection to Determine Flight Hours

(g) Within 50 flight hours after the effective date of this AD, inspect to determine the number of flight cycles accumulated by each of the applicable accumulators (i.e., brake, aileron, elevator, and rudder accumulators) having part number (P/N) 08–8423–010 (MS28700–3) installed on the airplane. A review of airplane maintenance records is acceptable in lieu of this inspection if the number of flight cycles accumulated can be conclusively determined from that review.

Initial Ultrasonic Inspection

(h) For Model CL–215–1A10 (CL–215) and CL–215–6B11 (CL–215T) airplanes: do an ultrasonic inspection for cracking of the accumulator at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD, in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin listed in table 1 of this AD.

TABLE 1—SERVICE BULLETINS

For model—	Use Bombardier Service Bulletin—	Revision—	Dated—
CL–215–1A10 (CL–215)	215–541	1	March 12, 2010.
CL–215–6B11 (CL–215T)	215–3155	1	March 12, 2010.
CL–600–6B11 (CL–415)	215–4414	1	March 12, 2010.

(1) For any accumulator on which the inspection required by paragraph (g) of this AD shows an accumulation of more than 875 total flight cycles or on which it is not possible to determine the number of total accumulated flight cycles, do the inspection within 125 flight cycles after the effective date of this AD.

(2) For any accumulator on which the inspection required by paragraph (g) of this AD shows an accumulation of 875 total flight cycles or fewer, do the inspection before the accumulation of 1,000 flight cycles on the accumulator.

(i) For Model CL–215–6B11 (CL–415) airplanes, do an ultrasonic inspection for cracking of the accumulator at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD, in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD.

(1) For any accumulator on which the inspection required by paragraph (g) of this AD shows an accumulation of more than 750 flight cycles or on which it is not possible to determine the number of total accumulated flight cycles, do the inspection within 250 flight cycles after the effective date of this AD.

(2) For any accumulator on which the inspection required by paragraph (g) of this AD shows an accumulation of 750 total flight cycles or fewer, do the inspection before the accumulation of 1,000 flight cycles on the accumulator.

Repetitive Inspections

(j) If no cracking is found during any inspection required by paragraph (h) or (i) of this AD, repeat the inspection thereafter at intervals not to exceed 750 flight cycles.

(k) If any cracking is found during any inspection required by paragraph (h) or (i) of this AD, before further flight, replace the accumulator with a serviceable accumulator, in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin listed in Table 1 of this AD. Doing the replacement does not end the inspection requirements of this AD. Repeat the inspections required by paragraph (h) or (i) of this AD at intervals not to exceed 750 flight cycles.

Parts Installation

(l) As of the effective date of this AD, no person may install an accumulator (P/N) 08–8423–010 (MS28700–3) on any airplane unless the accumulator has been inspected in accordance with the requirements of this AD.

Credit for Actions Accomplished in Accordance With Previous Service Information

(m) Inspections accomplished before the effective date of this AD in accordance with the applicable service bulletin listed in Table 2 of this AD are considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 2—CREDIT SERVICE BULLETINS

For model—	Use Bombardier Service Bulletin—	Dated—
CL–215–1A10 (CL–215)	215–541	July 9, 2009.
CL–215–6B11 (CL–215T)	215–3155	July 9, 2009.
CL–600–6B11 (CL–415)	215–4414	July 9, 2009.

FAA AD Differences

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

No differences.

Other FAA AD Provisions

(n) 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, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding 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:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(o) Refer to MCAI Canadian Airworthiness Directive CF–2009–42R1, dated May 14, 2010; and the service bulletins listed in table 1 of this AD; for related information.

Material Incorporated by Reference

(p) You must use the service information contained in Table 3 of this AD 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 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.*

TABLE 3—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Bombardier Service Bulletin 215–541	1	March 12, 2010.
Bombardier Service Bulletin 215–3155	1	March 12, 2010.
Bombardier Service Bulletin 215–4414	1	March 12, 2010.

Issued in Renton, Washington, on January 26, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2444 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1109; Directorate Identifier 2010–NM–155–AD; Amendment 39–16597; AD 2011–03–13]

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:

Rudder Travel Limiter (RTL) return spring, part number (P/N) E0650–069–2750S, failed prior to completion of the required endurance test. In addition, the replacement RTL return spring, P/N 670–93465–1 * * * was found to be susceptible to chafing on the primary actuator, which could also result in eventual dormant spring failure. There are two return springs in the RTL and if both springs failed, a subsequent mechanical disconnect of the RTL components would result in an unannunciated failure of the RTL. This, in turn, would permit an increase of rudder authority beyond normal structural limits and, in the event of a strong rudder input, controllability of the aeroplane could be affected.

* * * * *

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

DATES: This AD becomes effective March 14, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 14, 2011.

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: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7318; 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 November 10, 2010 (75 FR 69030). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Rudder Travel Limiter (RTL) return spring, part number (P/N) E0650–069–2750S, failed prior to completion of the required endurance test. In addition, the replacement RTL return spring, P/N 670–93465–1 (*see* Note) was found to be susceptible to chafing on the primary actuator, which could also result in eventual dormant spring failure. There are two return springs in the RTL and

if both springs failed, a subsequent mechanical disconnect of the RTL components would result in an unannunciated failure of the RTL. This, in turn, would permit an increase of rudder authority beyond normal structural limits and, in the event of a strong rudder input, controllability of the aeroplane could be affected.

Note: RTL return springs, P/N 670–93465–1, were installed in production aeroplanes serial number 10266 (CL–600–2C10) and 15182 (CL–600–2D24) respectively and were introduced in-service by [Bombardier] Service Bulletin (SB) 670BA–27–047. SB 670BA–27–047 has since been superseded by [Bombardier] SB 670BA–27–055.

This directive mandates repetitive [detailed] inspection of the RTL [for broken] return springs and [damage through the casing, or chafing of the casing of the] primary actuator, with replacement of parts as necessary.

Corrective actions include replacing any broken return springs with new return springs, repairing any chafing of the primary actuator on its casing, and replacing any primary actuator that has damage through its casing with a new actuator. 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.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 477 products of U.S. registry. We also estimate that it will take 2 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. operators to be $81,090, 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:

2011–03–13 Bombardier, Inc.: Amendment 39–16597. Docket No. FAA–2010–1109; Directorate Identifier 2010–NM–155–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 14, 2011.

Affected ADs

(b) None.

Applicability

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

Subject

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

Reason

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

Rudder Travel Limiter (RTL) return spring, part number (P/N) E0650–069–2750S, failed prior to completion of the required endurance test. In addition, the replacement RTL return spring, P/N 670–93465–1 * * * was found to be susceptible to chafing on the primary actuator, which could also result in eventual dormant spring failure. There are two return springs in the RTL and if both springs failed, a subsequent mechanical disconnect of the RTL components would result in an unannunciated failure of the RTL. This, in turn, would permit an increase of rudder authority beyond normal structural limits and, in the event of a strong rudder input, controllability of the aeroplane could be affected.

* * * * *

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.

Initial Inspections and Replacement/Repair

(g) For airplanes that have accumulated 4,000 or less total flight hours as of the effective date of this AD: Before the accumulation of 6,000 total flight hours, do a detailed inspection of the RTL for broken return springs and damage through the casing, or chafing of the casing of the primary actuator, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–055, Revision A, dated August 6, 2010. Before further flight, replace any broken return springs with new springs, and repair or replace with a new actuator any chafed or damaged primary actuator, as applicable, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–055, Revision A, dated August 6, 2010. Repeat the inspection thereafter at intervals not to exceed 6,000 flight hours.

(h) For airplanes that have accumulated more than 4,000 total flight hours as of the effective date of this AD: Within 2,000 flight hours after the effective date of this AD, do a detailed inspection of the RTL for broken return springs and damage through the casing, or chafing of the casing of the primary actuator, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–055, Revision A, dated August 6, 2010. Before further flight, replace any broken return springs with new springs, and repair or replace any chafed or damaged primary actuator with a new actuator, as applicable, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–055, Revision A, dated August 6, 2010. Repeat the inspection thereafter at intervals not to exceed 6,000 flight hours.

Credit for Actions Accomplished in Accordance With Previous Service Information

(i) Actions accomplished before the effective date of this AD in accordance with Bombardier Service Bulletin 670BA–27–055, dated May 11, 2010, are considered acceptable for compliance with the corresponding actions specified in this AD.

FAA AD Differences

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

Other FAA AD Provisions

(j) 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, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding 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.

Related Information

(k) Refer to MCAI Canadian Airworthiness Directive CF–2010–18, dated June 16, 2010; and Bombardier Service Bulletin 670BA–27–055, Revision A, dated August 6, 2010; for related information.

Material Incorporated by Reference

(l) You must use Bombardier Service Bulletin 670BA–27–055, Revision A, dated August 6, 2010, 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 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 January 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2443 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1114; Directorate Identifier 2010–NM–206–AD; Amendment 39–16591; AD 2011–03–07]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Model F.28 Mark 0100, 1000, 2000, 3000, and 4000 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:

Prompted by an accident * * *, the FAA published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12. The design review conducted by Fokker on the F28 in response to these regulations revealed that, in case of a lightning strike, an ignition source can develop in the wing tank vapour space during fuel transfer from bag tank CWT [center wing tank], if the electrical power for refuelling is not switched off after refuelling.

Service experience has revealed situations where the power switch of the Fuelling Control Panel (FCP) appeared to be "ON" with the access panel closed. The cam on the access panel that should operate the power switch, if forgotten by flight crew or maintenance staff, can pivot away during closing of the panel, which may result in the switch staying in the "ON" position.

This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

* * * * *

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

DATES: This AD becomes effective March 14, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 14, 2011.

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: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

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 November 19, 2010 (75 FR 70861). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> Prompted by an accident * * *, the FAA published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12. The design review conducted by Fokker on the F28 in response to these regulations revealed that, in case of a lightning strike, an ignition source can develop in the wing tank vapour space during fuel transfer from bag tank CWT [center wing tank], if the electrical power for refuelling is not switched off after refuelling.
>
> Service experience has revealed situations where the power switch of the Fuelling Control Panel (FCP) appeared to be "ON" with the access panel closed. The cam on the access panel that should operate the power switch, if forgotten by flight crew or maintenance staff, can pivot away during closing of the panel, which may result in the switch staying in the "ON" position.
>
> This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.
>
> For the reasons described above, this [EASA] AD requires an inspection of the cam and, depending on findings, replacement with an improved part. Subsequently, this AD requires repetitive functional checks of the cam and, depending on findings, the necessary corrective actions.

The corrective action is adjusting the FCP cam until it operates correctly. 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.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 6 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $426 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 $4,086, or $681 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:

2011–03–07 Fokker Services B.V.: Amendment 39–16591. Docket No. FAA–2010–1114; Directorate Identifier 2010–NM–206–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 14, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Fokker Services B.V. Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes, all serial numbers, equipped with a center wing tank (CWT); and Model F.28

Mark 0100 airplanes, serial numbers 11244 through 11441; certificated in any category.

Subject

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

Reason

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

Prompted by an accident * * *, the FAA published Special Federal Aviation Regulation (SFAR) 88, and the Joint Aviation Authorities (JAA) published Interim Policy INT/POL/25/12. The design review conducted by Fokker on the F28 in response to these regulations revealed that, in case of a lightning strike, an ignition source can develop in the wing tank vapour space during fuel transfer from bag tank CWT [center wing tank], if the electrical power for refuelling is not switched off after refuelling.

Service experience has revealed situations where the power switch of the Fuelling Control Panel (FCP) appeared to be "ON" with the access panel closed. The cam on the access panel that should operate the power switch, if forgotten by flight crew or maintenance staff, can pivot away during closing of the panel, which may result in the switch staying in the "ON" position.

This condition, if not corrected, could result in a wing fuel tank explosion and consequent loss of the aeroplane.

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.

Initial Inspection and Corrective Actions

(g) Within 6 months after the effective date of this AD, inspect the FCP cam to determine the part number (P/N), in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–052, dated April 20, 2010 (for Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes); or SBF100–28–063, dated April 15, 2010 (for Model F.28 Mark 0100 airplanes).

(1) If the correct part number is installed (P/N D48127–009 for Model F.28 Mark 0100 airplanes and P/N A42509–089 for Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes), before further flight, do an inspection to verify that the cam operates correctly, in accordance with Part 1 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–052, dated April 20, 2010 (for Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes); or SBF100–28–063, dated April 15, 2010 (for Model F.28 Mark 0100 airplanes).

(2) If a part number other than P/N D48127–009 for Model F.28 Mark 0100 airplanes and P/N A42509–089 for Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes is installed, within 24 months after the effective date of this AD, replace the cam with a cam having a correct part number, and do an inspection to verify that the cam operates correctly, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–052, dated April 20, 2010 (for Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes); or SBF100–28–063, dated April 15, 2010 (for Model F.28 Mark 0100 airplanes).

(3) If, during any inspection required by paragraphs (g)(1) and (g)(2) of this AD, the cam does not operate correctly, before further flight, adjust the cam until it operates correctly, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–052, dated April 20, 2010 (for Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes); or SBF100–28–063, dated April 15, 2010 (for Model F.28 Mark 0100 airplanes).

Repetitive Inspections

(h) Within 1,200 flight hours after verifying that the cam operates correctly, as required by paragraphs (g)(1) and (g)(2) of this AD, as applicable: Do an inspection to verify that the cam operates correctly and, before further flight, do all applicable corrective actions, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF28–28–052, dated April 20, 2010 (for Model F.28 Mark 1000, 2000, 3000, and 4000 airplanes); or SBF100–28–063, dated April 15, 2010 (for Model F.28 Mark 0100 airplanes). Thereafter, repeat the inspection of the cam at intervals not to exceed 1,200 flight hours.

Parts Installation

(i) As of the effective date of this AD, no person may install an FCP access door, cam, or fueling panel on any airplane, unless the requirements of this AD have been accomplished on the cam.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: Although paragraph (6) of the MCAI provides an option to incorporate the repetitive functional inspection into the maintenance program and then use the maintenance program as a method of complying with the repetitive inspection requirement, this AD does not include that provision.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding 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.

Related Information

(k) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0139, dated July 1, 2010; Fokker Service Bulletin SBF28–28–052, dated April 20, 2010; and Fokker Service Bulletin SBF100–28–063, dated April 15, 2010; for related information.

Material Incorporated by Reference

(l) You must use Fokker Service Bulletin SBF28–28–052, dated April 20, 2010; or Fokker Service Bulletin SBF100–28–063, dated April 15, 2010; 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 Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices@stork.com*; Internet *http://www.myfokkerfleet.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 January 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2162 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0852; Directorate Identifier 2010–NM–005–AD; Amendment 39–16594; AD 2011–03–10]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 and A340–200 and –300 Series Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to 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:

A debonding area was detected on the RH [right-hand] elevator of an A340 in-service aeroplane during a scheduled maintenance task inspection.

Investigation has revealed that this debonding may have been caused by water ingress and, if not detected and corrected, might compromise the structural integrity of the elevators [and could result in reduced controllability of the airplane].

* * * * *

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

DATES: This AD becomes effective March 14, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of March 14, 2011.

On November 16, 2005 (70 FR 59263, October 12, 2005), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

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 8, 2010 (75 FR 54536), and proposed to supersede AD 2005–20–32, Amendment 39–14329 (70 FR 59263, October 12, 2005). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A debonding area was detected on the RH [right-hand] elevator of an A340 in-service aeroplane during a scheduled maintenance task inspection.

Investigation has revealed that this debonding may have been caused by water ingress and, if not detected and corrected, might compromise the structural integrity of the elevators [and could result in reduced controllability of the airplane].

DGAC [Direction Générale de l'Aviation Civile] France AD F–2004–118 R1 (EASA approval N. 2004–10125) required a one-time inspection of elevators skin panels installed on MSN up to 091, to detect potential liquid ingress and repair as necessary, in accordance with Airbus inspection service bulletins (ISB) A330–55–3032 and A340–55–4029.

Following the AD issuance, further in-service experience has shown that in order to ensure the structural integrity of all A330/A340 elevators skin panels with sandwich construction (excluding A340–500/–600), it is necessary to perform the same elevators panels inspection and to repair as necessary, but in a repetitive manner.

The aim of this AD, which supersedes DGAC France AD F–2004–118 R1, is to require this additional inspection program in order to maintain the structural integrity of the elevators.

The required actions include repetitive special detailed inspections and repetitive re-protection of the elevator assembly. The special detailed inspections consist of the following actions:

- Repetitive endoscopic inspections for damage (such as a scratch, disbonding, or a tear) of the inner skin of the upper and lower elevator panels on both sides of the airplane, and if any damage is found, contacting Airbus for instructions and doing the instructions.
- Repetitive tap tests for debonding in the inner side of the upper and lower elevator panels on both sides, and if any debonding is found, contacting Airbus for instructions and doing the instructions.
- Repetitive thermographic inspections for indications of trapped water in the upper and lower elevator panels on both sides of the airplane, and if any indications of trapped water are found, doing applicable corrective actions (including, but not limited to, repeating the thermographic inspection to determine the size of the damaged area, doing a general visual inspection to determine if there is an existing repair, contacting Airbus for instructions and doing the instructions, re-protecting the affected surfaces, and repairing holes).
- Repetitively re-protect the elevator assembly (including doing a general visual inspection to determine damage and repair if necessary, a general visual inspection to determine if the drainage holes are clean and not obstructed and cleaning the drainage holes if necessary, a general visual inspection to determine the status of the static discharges contour and sealing the static discharges contour if necessary, and installing front spar access hole covers).

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

New Service Information

The NPRM referred to Airbus Service Bulletin A330–55–3032 and Airbus Service Bulletin A340–55–4029, both dated December 22, 2003, as appropriate sources of service information for certain actions. Airbus has revised this service information. Airbus has issued Mandatory Service Bulletins A330–55–3032, Revision 01 including Appendix 01, dated March 29, 2005; and A340–55–4029, Revision 01, dated March 29, 2005; which among minor changes, change the classification of these service bulletins from recommended to mandatory. We have revised this final rule to also refer to Revision 01 of these service bulletins as appropriate sources of service information for certain actions.

Comments

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

Request for a New AD Instead of a Superseding AD

Delta Air Lines, Inc. (Delta) requested that we mandate a new AD instead of superseding AD 2005–20–32, to eliminate possible confusion for operators in complying with the requirements of the NPRM and the AD being superseded. Delta explained that AD 2005–20–32 applied to a specific range of elevator parts and serial numbers that required inspection, repair, and re-protection, as required by Airbus Service Bulletin A330–55–3032, dated December 22, 2003. Delta reasoned that paragraph (h) of AD 2005–20–32, states that installation of an affected elevator after the AD effective date, November 16, 2005, was not approved unless the subject elevator complied with paragraph (h) of AD 2005–20–32. Delta reasoned further that the NPRM applies to a larger population of elevators and has inspections, repairs (if required), and re-protection, as specified in Airbus Mandatory Service Bulletin A330–55–3039, dated August 7, 2009. Delta stated that the thresholds in the NPRM are based on previous inspections required by Airbus Service Bulletin A330–55–3032, dated December 22, 2003.

We assume that Delta intended to refer to paragraph (i) instead of (h) of

AD 2005–20–32, which states that installation of an affected elevator after the AD effective date, November 16, 2005, is not approved unless the subject elevator complies with paragraph (h) of AD 2005–20–32. We disagree with mandating a new AD instead of this final rule, which supersedes AD 2005–20–32. Operators that comply with the new requirements of this final rule terminate the restated requirements of AD 2005–20–32. Restating the requirements of AD 2005–20–32 is necessary because some of the new required inspection thresholds in this final rule are calculated from the date the inspection was performed, as specified in AD 2005–20–32. We have not changed this final rule in this regard.

Request for Removal of Reporting Requirements

Delta requested that we remove the reporting requirements of paragraph (n) of the NPRM. Delta explained that requiring operators to report their findings (both positive and negative) to Airbus does not affect safety of flight, but instead puts operators at risk of non-compliance for failure to report findings within the required timeline, and is a duplication of records that is a burden to operators. Delta indicated that they maintain records of accomplishment of mandated work. Delta argued further, that removal of the reporting requirement would be consistent with the FAA's ruling per AD 2005–20–32, which notes:

"We require operators to submit information relevant to AD actions only when our analyses indicate that such information is needed to ensure safety or to document compliance. We cannot require operators to submit information to improve processes. We have not changed the AD in this regard."

We disagree to remove the reporting requirements of this final rule. We mandate reporting to Airbus in support of collecting the inspection results, which are helpful to Airbus in developing a final fix to the problem, a potential change in the design of the affected part, or the manufacturing process. We have not changed this final rule in this regard.

Request for Reference to Paragraph (k)

Delta requested that we revise paragraph (o) to include a reference to paragraph (k) instead of paragraph (l) in the NPRM. Delta explained that the following sentence in paragraph (o) of the NPRM, which states:

"do not install any elevator identified in Table 1 of this AD on any airplane, unless the elevator has been inspected in accordance with paragraph (l) of this AD and all applicable corrective actions have been done."

contains a typographical error and should include a reference to paragraph (k) for inspections and paragraph (l) for corrective actions.

We agree to include a reference to paragraph (k) instead of paragraph (l), in paragraph (o) of the final rule. We have revised the final rule accordingly.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 56 products of U.S. registry.

The actions that are required by AD 2005–20–32 and retained in this AD take about 1 work-hour per product, at an average labor rate of $85 per work-hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it will take about 14 work-hours per product to comply with the new 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. operators to be $66,640, or $1,190 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–14329 (70 FR 59263, October 12, 2005) and adding the following new AD:

2011–03–10 Airbus: Amendment 39–16594. Docket No. FAA–2010–0852; Directorate Identifier 2010–NM–005–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 14, 2011.

Affected ADs

(b) This AD supersedes AD 2005–20–32, Amendment 39–14329.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, and A340–211, –212, –213, –311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers, if equipped with any of the elevator part numbers (P/N) identified in Table 1 of this AD ("ZZ" indicates a number from 00 up to 99 inclusive).

TABLE 1—ELEVATOR PART NUMBERS

For the left-hand elevator	For the right-hand elevator
P/N F55280000000ZZ	P/N F55280000001ZZ
P/N F55280000002ZZ	P/N F55280000003ZZ
P/N F55280000004ZZ	P/N F55280000005ZZ
P/N F55280000006ZZ	P/N F55280000007ZZ
P/N F55280000008ZZ	P/N F55280000009ZZ
P/N F55280000012ZZ	P/N F55280000013ZZ
P/N F55280002000ZZ	P/N F55280002001ZZ
P/N F55280005000ZZ	P/N F55280005001ZZ
P/N F55280005002ZZ	P/N F55280005003ZZ
P/N F55280005004ZZ	P/N F55280005005ZZ

Subject

(d) Air Transport Association (ATA) of America Code 55: Stabilizers.

Reason

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

A debonding area was detected on the RH [right-hand] elevator of an A340 in-service aeroplane during a scheduled maintenance task inspection.

Investigation has revealed that this debonding may have been caused by water ingress and, if not detected and corrected, might compromise the structural integrity of the elevators [and could result in reduced controllability 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 2005–20–32

Service Bulletin Exceptions for Airbus Service Bulletin A330–55–3032 and Airbus Service Bulletin A340–55–4029

(g) Where Airbus Service Bulletins A330–55–3032 and Airbus Service Bulletin A340–55–4029, both dated December 22, 2003; and Airbus Mandatory Service Bulletin A330–55–3032 and Airbus Mandatory Service Bulletin A340–55–4029, both Revision 1, both dated March 29, 2005; recommend contacting Airbus for appropriate action: Before further flight, repair the condition according to a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; the Direction Générale de l'Aviation Civile (or its delegated agent); or EASA (or its delegated agent).

(h) Although Airbus Service Bulletin A330–55–3032 and Airbus Service Bulletin A340–55–4029, both dated December 22, 2003; and Airbus Mandatory Service Bulletin A330–55–3032 and Airbus Mandatory Service Bulletin A340–55–4029, both Revision 1, both dated March 29, 2005; specify to submit certain information to the manufacturer, this AD does not include that requirement.

Determining Part Number, Serial Number

(i) For Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes: At the later of the times specified in paragraphs (i)(1) and (i)(2) of this AD, perform an inspection to determine the part number and serial number of the left- and right-hand elevator assemblies. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of each elevator assembly can be conclusively determined from that review. If neither elevator assembly has a part number and serial number combination identified in Table 2 of this AD, no further action is required by this paragraph. If either elevator assembly has a part number and serial number combination identified in Table 2 of this AD, do paragraph (j) of this AD. Doing the actions in paragraph (k) of this AD terminates the requirements of paragraph (i) of this AD.

(1) Within 10 years after the date of the first flight of the airplane, or before the accumulation of 12,000 total flight cycles, whichever is first.

(2) Within 18 months after November 16, 2005 (the effective date of AD 2005–20–32).

TABLE 2—AFFECTED ELEVATOR PART NUMBERS AND SERIAL NUMBERS IN AD 2005–20–32

Part	Affected part Nos.	Affected serial Nos.
Left-hand elevator assembly	F55280000000, F55280000004 ..	CG1002 through CG1091 inclusive, CG1093, CG1094, CG2001.
Right-hand elevator assembly	F55280000001, F55280000005 ..	CG1002 through CG1094 inclusive, CG2001.

Inspections

(j) For Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–211, –212, –213, –311, –312, and –313 airplanes: If the left- or right-hand elevator assembly has a part number and serial number combination identified in Table 2 of this AD, before further flight after accomplishing paragraph (i) of this AD, do the actions in paragraphs (j)(1), (j)(2), and (j)(3) of this AD, as applicable. Doing the actions in paragraph (k) of this AD terminates the requirements of paragraph (j) of this AD.

(1) Perform an endoscopic inspection to detect damage (such as a scratch, disbonding, or a tear), and a tap test and a thermographic inspection to detect signs of moisture penetration, to the upper and lower elevator panels on both sides of the airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes) or Airbus Service Bulletin A340–55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both dated December 22, 2003, as applicable; or Airbus Mandatory Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes) or Airbus Mandatory Service Bulletin A340–55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both Revision 1, both dated March 29, 2005, as applicable; except as provided by paragraphs (g) and (h) of this AD.

(2) If any damage is found, before further flight, do all applicable corrective actions (including, but not limited to, repeating the thermographic inspection to determine the size of the damaged area, and performing a tap test around the areas where moisture is indicated), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes) or Airbus Service Bulletin A340–55–4029 (for Model A340–211, –212, –213,

–311, –312, and –313 airplanes), both dated December 22, 2003, as applicable; or Airbus Mandatory Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes) or Airbus Mandatory Service Bulletin A340–55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both Revision 1, both dated March 29, 2005, as applicable; except as provided by paragraphs (g) and (h) of this AD.

(3) Re–protect the elevator assembly (including performing a general visual inspection to determine if the drainage holes are clean, a general visual inspection to determine the condition of the sealant covering the static discharges contour, and applicable corrective actions), in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes) or Airbus Service Bulletin A340–55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both dated December 22, 2003, as applicable; or Airbus Mandatory Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes) or Airbus Mandatory Service Bulletin A340–55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both Revision 1, both dated March 29, 2005, as applicable; except as provided by paragraphs (g) and (h) of this AD.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

New Requirements of This AD

Repetitive Inspection

(k) Within the applicable time in paragraph (k)(1) or (k)(2) of this AD, do a special detailed inspection for discrepancies (scratches, debonding, tears, and indications of trapped water), on the elevator upper and lower skin panels, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3039 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes) or A340–55–4035 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both dated August 7, 2009. Repeat the inspections thereafter at intervals not to exceed 72 months from the date of the elevator's first flight after the last inspection. Doing the special detailed inspection specified in this paragraph terminates the requirements of paragraphs (i) and (j) of this AD.

(1) For elevators identified in Table 1 of this AD that have not been inspected in accordance with Airbus Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes) or Airbus Service Bulletin A340–55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes) both dated December 22, 2003; and Airbus Mandatory Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes) or Airbus Mandatory Service Bulletin A340–55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both Revision 1, both dated March 29, 2005: Within 144 months since the date of the elevator's first flight on any airplane, or within 24 months after the effective date of this AD, whichever occurs later.

(2) For elevators identified in Table 1 of this AD that have been inspected in accordance with Airbus Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes) or Airbus Service Bulletin A340–55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes) both dated December 22, 2003; or Airbus Mandatory Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes) or Airbus Mandatory Service Bulletin A340–55–4029 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both Revision 1, both dated March 29, 2005: Within 72 months since the date of the elevator's first flight on any airplane after accomplishing Airbus Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes) or Airbus Service Bulletin A340–55–4029, (for Model A340–211, –212, –213, –311, –312, and –313 airplanes) both dated December 22, 2003; or Airbus Mandatory Service Bulletin A330–55–3032 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes) or Airbus Mandatory Service Bulletin A340–55–4029, (for Model A340–211, –212, –213, –311, –312, and –313 airplanes) both Revision 1, both dated March 29, 2005; as applicable; or within 24 months after the effective date of this AD, whichever occurs later.

Corrective Action

(l) If any discrepancy is found during any inspection required by paragraph (k) of this AD, before further flight, do all applicable corrective actions (including applicable inspections and repair), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3039 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes) or A340–55–4035 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both dated August 7, 2009; or contact Airbus for instructions and follow their corrective actions.

Re-protection

(m) For elevators on which any action required by paragraph (k) or (l) of this AD is done: Before the elevator's next flight, do a re–protection (including all applicable inspections and corrective actions), in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–55–3039 (for Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes); or A340–55–4035 (for Model A340–211, –212, –213, –311, –312, and –313 airplanes), both dated August 7, 2009.

Reporting

(n) Submit a report of the findings (both positive and negative) of the inspection required by paragraph (k) of this AD to Airbus, as specified in Appendix 1 of Airbus Mandatory Service Bulletin A330–55–3039, dated August 7, 2009; or Airbus Mandatory Service Bulletin A340–55–4035, dated August 7, 2009; as applicable; at the applicable time specified in paragraph (n)(1) or (n)(2) of this AD. The report must include the information identified in Appendix 1 of Airbus Mandatory Service Bulletin A330–55–3039, dated August 7, 2009; or Airbus Mandatory Service Bulletin A340–55–4035, dated August 7, 2009; as applicable.

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

(2) 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.

Parts Installation

(o) As of the effective date of this AD, do not install any elevator identified in Table 1 of this AD on any airplane, unless the elevator has been inspected in accordance with paragraph (k) of this AD and all applicable corrective actions have been done.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(p) 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding 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:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave., SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

Related Information

(q) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009–0255, dated December 1, 2009, and the service bulletins listed in Table 3 of this AD, for related information.

TABLE 3—SERVICE BULLETINS

Document	Revision	Date
Airbus Service Bulletin A330–55–3032	Original	December 22, 2003.
Airbus Mandatory Service Bulletin A330–55–3032	1	March 29, 2005.
Airbus Service Bulletin A340–55–4029	Original	December 22, 2003.
Airbus Mandatory Service Bulletin A340–55–4029	1	March 29, 2005.
Airbus Mandatory Service Bulletin A330–55–3039	Original	August 7, 2009.
Airbus Mandatory Service Bulletin A340–55–4035	Original	August 7, 2009.

Material Incorporated by Reference

(r) You must use the service information contained in Table 4 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise.

TABLE 4—ALL MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Airbus Service Bulletin A330–55–3032, excluding Appendix 01	Original	December 22, 2003.
Airbus Mandatory Service Bulletin A330–55–3032, excluding Appendix 01	1	March 29, 2005.
Airbus Service Bulletin A340–55–4029, excluding Appendix 01	Original	December 22, 2003.
Airbus Mandatory Service Bulletin A340–55–4029, excluding Appendix 01	1	March 29, 2005.
Airbus Mandatory Service Bulletin A330–55–3039, including Appendix 01	Original	August 7, 2009.
Airbus Mandatory Service Bulletin A340–55–4035, including Appendix 01	Original	August 7, 2009.

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

TABLE 5—NEW MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Airbus Mandatory Service Bulletin A330–55–3032, excluding Appendix 01	1	March 29, 2005.
Airbus Mandatory Service Bulletin A340–55–4029, excluding Appendix 01	1	March 29, 2005.
Airbus Mandatory Service Bulletin A330–55–3039, including Appendix 1	Original	August 7, 2009.
Airbus Mandatory Service Bulletin A340–55–4035, including Appendix 1	Original	August 7, 2009.

(2) The Director of the Federal Register previously approved the incorporation by reference of Airbus Service Bulletin A330–55–3032, excluding Appendix 01, dated December 22, 2003; and Airbus Service Bulletin A340–55–4029, excluding Appendix 01, dated December 22, 2003; on November 16, 2005 (70 FR 59263, October 12, 2005).

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

(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 January 26, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2430 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0801; Directorate Identifier 2010–NM–054–AD; Amendment 39–16595; AD 2011–03–11]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600 and A300 B4–600R Series Airplanes, Model A300 F4–605R Airplanes, and Model A300 C4–605R Variant F 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:

A recent Wide spread Fatigue Damage (WFD) calculation on A300–600 aeroplanes has shown that a reinforcement of the upper fuselage circumferential joint at FR (frame) 58 is necessary to enable the aeroplane to reach the Extended Service Goal (ESG).

The failure of the circumferential joint of the upper fuselage could affect the structural integrity of the aeroplane.

* * * * *

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

DATES: This AD becomes effective March 14, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of March 14, 2011.

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

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; 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 August 23, 2010 (75 FR 51705). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

A recent Wide spread Fatigue Damage (WFD) calculation on A300–600 aeroplanes has shown that a reinforcement of the upper fuselage circumferential joint at FR (frame) 58 is necessary to enable the aeroplane to reach the Extended Service Goal (ESG).

The failure of the circumferential joint of the upper fuselage could affect the structural integrity of the aeroplane.

For the reasons described above, this AD requires the reinforcement of the affected fuselage frame butt joint.

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.

Request To Revise Paragraph (g) of the NPRM

FedEx Express (FedEx) requested that we add the following sentence to paragraph (g) of the NPRM: "Accomplish modification in accordance with the thresholds specified in [Airbus Mandatory] Service Bulletin A300–53–6146, Revision 01, [dated June 26, 2009,] paragraph E(2), Accomplishment Timescale." FedEx stated that the threshold table in that service bulletin recommends the number of flight cycles for each model after which the modification should be embodied; if the modification is embodied before the recommended threshold, additional inspections are required according to Airbus instructions. FedEx further stated that the NPRM stipulates accomplishment before 42,500 flight cycles and FedEx agrees that following the Airbus recommendation for the thresholds will avoid extensive inspections similar to the Airworthiness Limitations Items (ALI) Tasks 53.16.04–01–1 and 53.16.22–01–1.

We do not agree to add the quoted sentence to the AD because, by doing the requirements of this AD at or before the compliance time specified in this AD, no further inspections are required by this AD. However, we have added a new Note 1 that states "In case of earlier accomplishment of Airbus Mandatory Service Bulletin A300–53–6146, Revision 01, dated June 26, 2009, before the recommended thresholds contained in the Threshold Table in paragraph 1.E.(2) of Airbus Mandatory Service Bulletin A300–53–6146, Revision 01, dated June 26, 2009, are reached, the operator should contact Airbus to define an additional non-mandatory appropriate inspection program." We have reidentified subsequent notes accordingly.

Further, we have determined that accomplishing the actions required by this AD terminates ALI Tasks 53.16.04–01–1 and 53.16.22–01–1. Therefore, we have added a new paragraph (h) to this AD to clarify that doing the requirements of this AD terminates ALI Tasks 53.16.04–01–1 and 53.16.22–01–1. We have reidentified subsequent paragraphs accordingly.

Conclusion

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

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable.

In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

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

Costs of Compliance

We estimate that this AD will affect about 124 products of U.S. registry. We also estimate that it will take about 347 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 $5,670 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 $4,360,460 or $35,165 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:

2011–03–11 Airbus: Amendment 39–16595. Docket No. FAA–2010–0801; Directorate Identifier 2010–NM–054–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective March 14, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, and B4–622 airplanes; Model A300 B4–605R and B4–622R airplanes; Model A300 F4–605R airplanes on which modification 12699 has not been accomplished; and Model A300 C4–605R Variant F airplanes; certificated in any category; all serial numbers.

Subject

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

Reason

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

A recent Wide spread Fatigue Damage (WFD) calculation on A300–600 aeroplanes has shown that a reinforcement of the upper fuselage circumferential joint at FR (frame) 58 is necessary to enable the aeroplane to reach the Extended Service Goal (ESG).

The failure of the circumferential joint of the upper fuselage could affect the structural integrity of the aeroplane.

* * * * *

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) Before the accumulation of 42,500 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later, reinforce the fuselage butt joint at FR 58 in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–53–6146, Revision 01, including Appendix 1, dated June 26, 2009.

(h) Accomplishment of the requirements of paragraph (g) of this AD terminates Airworthiness Limitations Items (ALI) Tasks 53.16.04–01–1 and 53.16.22–01–1 for these airplanes.

Note 1: In case of earlier accomplishment of Airbus Mandatory Service Bulletin A300–53–6146, Revision 01, dated June 26, 2009, before the recommended thresholds contained in the Threshold Table in paragraph 1.E.(2) of Airbus Mandatory Service Bulletin A300–53–6146, Revision 01, dated June 26, 2009, are reached, the operator should contact Airbus to define an additional appropriate inspection program.

FAA AD Differences

Note 2: 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding 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 2010–0007, dated January 7, 2010; and Airbus Mandatory Service Bulletin A300–53–6146, Revision 01, including Appendix 1, dated June 26, 2009; for related information.

Material Incorporated by Reference

(k) You must use Airbus Mandatory Service Bulletin A300–53–6146, Revision 01, including Appendix 1, dated June 26, 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 SAS—EAW (Airworthiness Office), 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 January 25, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2433 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 878

[Docket No. FDA–2010–D–0645]

Medical Devices; General and Plastic Surgery Devices; Classification of Contact Cooling System for Aesthetic Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the contact cooling system for aesthetic use into class II (special controls). The special control that will apply to the device is the guidance document entitled "Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Contact Cooling System for Aesthetic Use." The Agency is classifying the device into class II (special controls) in order to provide reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of a guidance document that will serve as the special control for this device type.

DATES: *Effective Date:* March 9, 2011.

FOR FURTHER INFORMATION CONTACT: Richard Felten, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1436, Silver Spring, MD 20993, 301–796–6392.

SUPPLEMENTARY INFORMATION:

I. What is the background of this rulemaking?

The Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 301 *et seq.*) as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), and the Food and Drug Administration Modernization Act (Pub. L. 107–250) established a comprehensive system for regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

FDA refers to devices that were not in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), as postamendments devices. Postamendments devices are classified automatically by statute (section 513(f) of the FD&C Act) into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval unless: (1) FDA reclassifies the device into class I or II; (2) FDA issues an order classifying the device into class I or class II in accordance with section 513(f)(2) of the FD&C Act; or FDA issues an order finding the device to be substantially equivalent, under section 513(i) to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of FD&C Act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

Section 513(f)(2) of the FD&C Act provides that any person who submits a premarket notification under section 510(k) of the FD&C Act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device that has not previously been classified into class III under section 513(f)(1), request FDA to classify the device under the criteria set forth in section 513(a)(1). FDA will, within 60 days of receiving this request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing this classification.

In accordance with section 513(f)(1) of the FD&C Act, FDA issued an order on October 7, 2009, classifying the Zeltiq Lipolysis System for Aesthetic Use into class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On October 13, 2009, Zeltiq™ Aesthetic, Inc., submitted a petition requesting classification of the lipolysis system for aesthetic use under section 513(f)(2) of the FD&C Act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with section 513(f)(2) of the FD&C Act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in section 513(a)(1). FDA classifies devices into class II if general controls by themselves are insufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the contact cooling system for aesthetic use can be classified into class II with the establishment of special controls. FDA believes these special controls will provide assurance of the safety and effectiveness of the device.

The device was assigned the generic name "Cooling System for Aesthetic Use" and it is identified as a cooling system for aesthetic use. FDA has identified the following risks to health associated specifically with this type of device and the recommended measures to mitigate these risks.

- Discomfort and pain during and following treatment are possible due to the application of mechanical or vacuum massage at levels in excess of those recommended in the labeling. These effects and tenderness at the treatment site may also occur following treatment. Prevention of these effects are addressed by adequate bench testing demonstrating that the feedback controls for temperature/cooling are functional and do maintain target temperature within the stated value. Proper function of mechanical controls to insure use of the mechanical or vacuum massager within safe limits

should be confirmed as part of bench testing.

• Electrical shock is addressed by recommended testing of the device according to recognized U.S. and International Standards specifically designed to determine and measure potential electrical safety. Again, the recommended device labeling also includes specific warnings for the user in terms of device placement, appropriate electrical wiring needs, reminders to periodically check device wiring and accessories for damage, and avoidance of use of the device in environments where electrical shock is possible.

• Use error represents those risks to the patient that can occur from improper use of the device. In order to address this potential risk, we recommend the manufacturer provide a detailed operator manual which contains information on possible risks and hazards and how these should be avoided and clear recommended safe treatment procedures that include information on device settings for treatment, clear information on how the device is to be used during treatment, and recommended post treatment care.

• Tissue damage from uncontrolled cooling is a risk which is addressed by the above stated bench testing of the temperature control system. In addition the labeling provided shall give recommended safe use parameters in terms of temperature setting and duration of treatment with these parameters supported by animal or clinical data.

• Systemic response to cold is a potential hazard for individuals who may have underlying cold sensitive health conditions or reduced skin sensitivity due to other medical conditions. This risk is addressed through the device labeling which provides appropriate cautions, warnings and contradictions for such cold sensitive conditions.

• Skin inflammation or foreign body responses can be an issue for individuals based on the skin contact nature of this device. This type of skin irritation is prevented by appropriate testing for biocompatibility of the contact materials when in contact with skin.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES

Identified risk	Recommended mitigation measures
Discomfort, Pain, Tenderness	Section 6. Bench Testing Section 9. Clinical Testing Section 13. Labeling
Thermal Injury (Tissue Damage from Uncontrolled Cooling)	Section 6. Bench Testing Section 7. Software Validation Section 8. Animal Testing Section 9. Clinical Testing Section 11. Electromagnetic Compatibility (IEC 60601–1–2) Section 13. Labeling
Systemic Response to Cold	Section 9. Clinical Testing Section 13. Labeling
Electrical Shock	Section 12. Electrical and Mechanical Safety (IEC 60601–1)
Inflammation/Foreign Body Response	Section 10. Biocompatibility (ISO 10993)
Use Error	Section 13. Labeling

FDA believes that the special controls, in addition to general controls, address the risks to health identified in table 1 of this document and provide reasonable assurance of the safety and effectiveness of the device type. Therefore, on August 24, 2010, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this device classification by adding 21 CFR 878.4340.

Following the effective date of the final classification rule, any firm submitting a 510(k) premarket notification for cooling system for aesthetic use device intended for the disruption of adipocyte cells intended for non-invasive aesthetic use will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the FD&C Act provides that FDA may exempt a class II device from the premarket notification requirement under section 510(k), if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device and, therefore, the type of device is not exempt from premarket notification requirements. Persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the cooling system for aesthetic use that they intend to market.

II. What is the environmental impact of this rule?

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. What is the analysis of impacts of this rule?

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this final rule is not a significant regulatory action as defined by the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because reclassification of this device from class III to class II will relieve manufacturers of the cost of complying with the premarket approval requirements of section 515 of the FD&C

Act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs, the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $135 million, using the most current (2009) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this final rule to result in any 1-year expenditure that would meet or exceed this amount.

IV. Does this final rule have federalism implications?

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. Section 4(a) of the Executive order requires agencies to "construe * * * a Federal statute to preempt State law only where the statute contains an express preemption provision or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute." Federal law includes an express preemption provision that preempts certain State requirements "different from or in addition to" certain Federal requirements applicable to devices. 21 U.S.C. 360k; *See Medtronic* v. *Lohr* 518 U.S. 470 (1996); *Riegel* v. *Medtronic,* 552 U.S. 312 (2008). The special controls established by this final rule create "requirements" to address each identified risk to health presented by these specific medical devices under 21 U.S.C. 360k, even though product sponsors have flexibility in how they meet those requirements. Cf. *Papike* v. *Tambrands,* Inc., 107 F. 3d 737, 740–42 (9th Cir. 1997).

V. How does this rule comply with the paperwork reduction act of 1995?

This final rule contains no collections of new information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 is not required. Elsewhere in this issue of the **Federal Register**, FDA is issuing a notice announcing availability of the guidance for the final rule. This guidance entitled "Class II Special Controls Guidance Document: Contact Cooling System for Aesthetic Use" references previously approved collections of information found in FDA regulations.

VI. What references are on display?

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Zeltiq Aesthetics, October 13, 2009.

List of Subjects in 21 CFR Part 878

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 878 is amended as follows:

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

■ 1. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

■ 2. Section 878.4340 is added to subpart E to read as follows:

§ 878.4340 Contact cooling system for aesthetic use.

(a) *Identification.* A contact cooling system for aesthetic use is a device that is a combination of a cooling pad associated with a vacuum or mechanical massager intended for the disruption of adipocyte cells intended for non-invasive aesthetic use.

(b) *Classification.* Class II (special controls). The special controls for this device is FDA's "Guidance for Industry and FDA Staff; Class II Special Controls Guidance Document: Contact Cooling System for Aesthetic Use." See § 878.1(e) for the availability of this guidance document.

Dated: February 1, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–2552 Filed 2–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9514]

RIN 1545–BG34

Time and Manner for Electing Capital Asset Treatment for Certain Self-Created Musical Works

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation and removal of temporary regulation.

SUMMARY: This document contains a final regulation that provides the time and manner rules for electing to treat the sale or exchange of a musical composition or a copyright in a musical work created by the taxpayer (or received by the taxpayer from the composition or work's creator in a transferred basis transaction) as the sale or exchange of a capital asset. The regulation reflects changes to the law made by the Tax Increase Prevention and Reconciliation Act of 2005 and the Tax Relief and Health Care Act of 2006. The regulation affects taxpayers who elect to treat gain or loss from such a sale or exchange as capital gain or loss.

DATES: *Effective Date:* This regulation is effective on February 7, 2011.

Applicability Date: For date of applicability, see § 1.1221–3(d).

FOR FURTHER INFORMATION CONTACT: Jamie Kim, (202) 622–4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains an amendment to the Income Tax Regulations (26 CFR part 1). On February 8, 2008, a temporary regulation (TD 9379) was published in the **Federal Register** (73 FR 7464) that provided the time and manner rules for electing capital asset treatment for certain self-created musical works. A notice of proposed rulemaking (REG–153589–06) cross-referencing the temporary regulation also was published in the **Federal Register** (73 FR 7503) on February 8, 2008. No comments in response to the notice of proposed rulemaking or requests to hold a public hearing were received, and no hearing was held. This Treasury decision adopts the proposed regulation with minor changes and removes the temporary regulation.

Section 1221(a) of the Internal Revenue Code (Code) generally provides that capital assets include all property

held by a taxpayer with certain specified exclusions. Section 1221(a)(1) excludes from the definition of a capital asset inventory property or property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. Section 1221(a)(3) excludes from the definition of a capital asset certain property—a copyright; a literary, musical, or artistic composition; a letter or memorandum; or similar property—held by a taxpayer whose personal efforts created the property (or held by a taxpayer whose basis in the property is determined by reference to the basis of such property in the hands of the taxpayer whose personal efforts created the property).

Section 1221(b)(3) of the Code, added by section 204 of the Tax Increase Prevention and Reconciliation Act of 2005, Public Law 109–222 (120 Stat. 345 (2005)), and amended by section 412 of the Tax Relief and Health Care Act of 2006, Public Law 109–432 (120 Stat. 2922 (2006)), provides that, at the election of a taxpayer, the section 1221(a)(1) and (a)(3) exclusions from capital asset status will not apply to a musical composition or a copyright in a musical work sold or exchanged by a taxpayer described in section 1221(a)(3). Thus, if a taxpayer who owns a musical composition or copyright in a musical work created by the taxpayer (or transferred to the taxpayer by the composition or work's creator in a transferred basis transaction) elects the application of this provision, gain or loss from the sale or exchange of the musical composition or copyright is treated as capital gain or loss.

Explanation of Provisions

This final regulation provides rules regarding the time and manner for electing under section 1221(b)(3) to treat gain or loss from the sale or exchange of certain musical compositions or copyrights in musical works as gain or loss from the sale or exchange of a capital asset.

Effective/Applicability Date

This regulation applies to elections under section 1221(b)(3) in taxable years beginning after May 17, 2006.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. Chapter 5) does not apply to this regulation, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. Chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Jamie Kim of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and the Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows.

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.1221–3 is added to read as follows:

§ 1.1221–3 Time and manner for electing capital asset treatment for certain self-created musical works.

(a) *Description.* Section 1221(b)(3) allows an electing taxpayer to treat the sale or exchange of a musical composition or a copyright in a musical work created by the taxpayer's personal efforts (or having a basis determined by reference to the basis of such property in the hands of a taxpayer whose personal efforts created such property) as the sale or exchange of a capital asset. As a consequence, gain or loss from the sale or exchange is treated as capital gain or loss.

(b) *Time and manner for making the election.* An election described in this section is made separately for each musical composition (or copyright in a musical work) sold or exchanged during the taxable year. An election must be made on or before the due date (including extensions) of the income tax return for the taxable year of the sale or exchange. The election is made on Schedule D, "Capital Gains and Losses," of the appropriate income tax form (for example, Form 1040, "U.S. Individual Income Tax Return;" Form 1065, "U.S. Return of Partnership Income;" Form 1120, "U.S. Corporation Income Tax Return") by treating the sale or exchange as the sale or exchange of a capital asset, in accordance with the form and its instructions.

(c) *Revocability of election.* The election described in this section is revocable with the consent of the Commissioner. To seek consent to revoke the election, a taxpayer must submit a request for a letter ruling under the applicable administrative procedures. Alternatively, an automatic extension of 6 months from the due date of the taxpayer's income tax return (excluding extensions) is granted to revoke the election, provided the taxpayer timely filed the taxpayer's income tax return and, within this 6-month extension period, the taxpayer files an amended income tax return that treats the sale or exchange as the sale or exchange of property that is not a capital asset.

(d) *Effective/applicability date.* This section applies to elections under section 1221(b)(3) in taxable years beginning after May 17, 2006.

§ 1.1221–3T [Removed]

■ **Par. 3.** Section 1.1221–3T is removed.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: January 28, 2011.

Michael Mundaca,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–2549 Filed 2–4–11; 8:45 am]

BILLING CODE 4830–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

[NARA–10–0005]

RIN 3095–AB69

Appeal Authority When Researcher Privileges Are Revoked

AGENCY: National Archives and Records Administration.

ACTION: Direct final rule.

SUMMARY: The National Archives and Records Administration (NARA) is changing the appeal authority for researchers whose privileges have been revoked for specific behaviors, from the Archivist of the United States to the Deputy Archivist of the United States. This change will align the appeal authority for researchers whose research privileges have been revoked with the appeal authority for individuals who have been banned from NARA facilities

for prohibited activities. Researchers maintain the same rights of appeal.

DATES: This rule is effective March 9, 2011 without further action, unless adverse comment is received by March 9, 2011. If adverse comment is received, NARA will publish a timely withdrawal of the rule in the **Federal Register**, and publish a notice of proposed rulemaking.

ADDRESSES: NARA invites interested persons to submit comments on this direct final rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* Submit comments by facsimile transmission to 301–837–0319.
- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Stuart Culy on (301) 837–0970.

SUPPLEMENTARY INFORMATION: NARA is authorized to revoke researchers' privileges under certain circumstances by following the procedures outlined in 36 CFR part 1254. The privileges may be revoked for the following behaviors: Refusing to follow the rules and regulations of a NARA facility; acting or speaking in a way that may be dangerous to documents held by NARA or NARA property; acting or speaking in a way that may be dangerous to other researchers, NARA or contractor employees, or volunteers; or verbally or physically harassing or annoying other researchers, NARA or contractor employees, or volunteers. This change will align the appeal authority for researchers whose research privileges have been revoked with the appeal authority for individuals who have been banned from NARA facilities for the following prohibited activities on NARA properties: Carrying or using guns or weapons, using or in possession of alcohol or illegal drugs; gambling; soliciting; stealing NARA property; willfully damaging or destroying NARA property; creating any hazard to persons or things; throwing anything from or at a NARA building; improperly disposing of rubbish; acting in a disorderly fashion; acting in a manner that creates a loud or unusual noise or a nuisance; acting in a manner that unreasonably obstructs the usual use of NARA facilities; acting in a manner that otherwise impedes or disrupts the performance of official duties by Government and contract employees; acting in a manner that prevents the general public from obtaining NARA-provided services in a timely manner; loitering; or threatening directly (*e.g.,* in-person communications or physical gestures) or indirectly (*e.g.,* via regular mail, electronic mail, or phone) any NARA employee, visitor, volunteer, contractor, other building occupants, or property, which is the Deputy Archivist of the United States. Researchers maintain the same rights of appeal.

Revocation actions are taken by staff at the NARA facility where an infraction takes place. In turn, researchers have the right to appeal the revocation to a higher authority than the local NARA facility director; a process which is also described in 36 CFR part 1254. The current appeal authority is the Archivist of the United States, yet the appeal authority for the more severe penalty of banning individuals from NARA facilities under 36 CFR part 1280, is the Deputy Archivist of the United States. This direct final rule will only change the appeal authority for researchers whose privileges have been revoked, from the Archivist of the United States to the Deputy Archivist of the United States, aligning the two disciplinary appeal processes. Researchers retain their full right to appeal revocation decisions.

NARA believes that a Notice of Proposed Rule Making is not necessary for "good cause" as permitted by the Administrative Procedures Act (5 U.S.C. 553(b)(B)) as this rule is a nomenclature change only, and there are no changes to the public's right to appeal revocation decisions.

This direct final rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, it is hereby certified that this direct final rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1254

Archives and records.

For the reasons set forth in the preamble, NARA amends part 1254 of title 36, Code of Federal Regulations, as follows:

PART 1254—USING RECORDS AND DONATED HISTORICAL MATERIALS

■ 1. The authority citation for part 1254 continues to read as follows:

Authority: 44 U.S.C. 2101–2118.

§ 1254.50 [Amended]

■ 2. In § 1254.50, remove the word "Archivist" and add, in its place, the words "Deputy Archivist" wherever it appears in the section.

§ 1254.52 [Amended]

■ 3. In § 1254.52, remove the word "Archivist" and add, in its place, the words "Deputy Archivist" wherever it appears in the section.

Dated: January 25, 2011.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2011–2033 Filed 2–4–11; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AN78

Loan Guaranty Revised Loan Modification Procedures

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: This document amends a Department of Veterans Affairs (VA) Loan Guaranty regulation related to modification of guaranteed housing loans in default. Specifically, changes are made to requirements related to maximum interest rates on modified loans and to items that may be capitalized in a modified loan amount. In addition, we are revising the regulation to clarify that the holder of a loan may seek VA approval for a loan modification that does not otherwise meet prescribed conditions. The amendments are intended to liberalize the requirements for modification of VA-guaranteed loans and provide holders more options for working with veterans to avoid foreclosure.

DATES: This interim final rule is effective February 7, 2011. Comments must be received on or before April 8, 2011.

ADDRESSES: Written comments may be submitted through *http://www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to "RIN 2900–AN78—Loan Guaranty Revised Loan Modification Procedures." Copies of comments received will be available for public inspection in the Office of

Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4923 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mike Frueh, Assistant Director for Loan Management (261), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at 202–461–9521. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. chapter 37, VA guarantees loans made by private lenders to veterans for the purchase, construction, and refinancing of homes owned and occupied by veterans. On February 1, 2008, VA published in the **Federal Register** (73 FR 6294) a final rule that extensively revised 38 CFR part 36 to modernize procedures for servicing VA-guaranteed home loans. A new subpart F was added to include § 36.4815, which provided detailed parameters for private loan servicers to modify delinquent loans without seeking prior approval from VA, thereby enabling servicers to quickly assist veteran borrowers in avoiding foreclosure. On June 15, 2010, VA published in the **Federal Register** (75 FR 33704) a final rule that redesignated subpart F (the 36.4800 series) to replace obsolete subpart B (the 36.4300 series) in its entirety.

Loan modifications typically give a borrower a fresh start by adding all or a portion of the delinquent amounts to the loan balance and resetting the due date for payments. Modifications usually adjust the terms of the loan agreement by: capitalizing delinquent interest, advances, or other amounts due; extending the repayment terms; changing the interest rate payable; or combining some or all of these or other adjustments to the loan terms.

In developing the parameters for acceptable loan modifications, we considered many options to balance the program mission of assisting veteran borrowers in retaining homeownership against the needs of private investors to receive a fair profit on their investments. We believed we had adequately addressed those concerns in the 2008 amendments to VA's loan guaranty regulations. However, since those amendments, we have encountered two sets of circumstances that have caused difficulty in easily modifying loans to assist veterans in retaining their homes.

In light of the continuing difficulties in the housing industry that are affecting the ability of many veterans to retain ownership of their homes, and in keeping with the Administration's plan to help borrowers retain home ownership through affordable loan modifications, this interim final rule is issued to immediately rectify those two issues. In addition, this interim final rule revises the regulation to clarify in § 36.4315(b) that holders may seek VA approval for a loan modification if the proposed modification does not otherwise meet the conditions prescribed in § 36.4315(a).

The first problem noted since the 2008 amendments concerns interest rates on modified loans. Current 38 CFR 36.4315(c) establishes the maximum interest rate on a modified loan as the previous month's Government National Mortgage Association (GNMA) coupon plus ½ percent. We understood that the vast majority of VA-guaranteed loans were placed in GNMA pools, and by allowing the maximum rate on a modified loan to equal that of a newly originated loan, we believed the mortgage industry would be able to easily modify loans to help veterans avoid foreclosure and place those modified loans in new GNMA pools. However, we have learned that this requirement is not quite as effective as planned in helping veterans to avoid foreclosure through loan modification. VA-guaranteed loans that are held by State housing-finance authorities often specifically prohibit changes in the interest rate when modifying loans. In the present low-interest-rate environment, current § 36.4315(c) creates difficulties in modifying loans that were originated with State housing-finance authority assistance at higher interest rates. Therefore, we are modifying § 36.4315 to allow the interest rate on a modified loan to remain the same as the original interest rate when the loan is held by a State housing-finance authority where the law precludes a rate revision. *See* 38 CFR 36.4315(a)(8)(iii).

We are further modifying § 36.4315 to allow for easier calculation of the maximum interest rate on all other modified loans (*i.e.*, those loans not held by a State housing-finance authority). In September 2009, the Department of Housing and Urban Development (HUD) issued Mortgagee Letter 2009–35 to change the maximum interest rate on modified loans to no more than 50 basis points above the most recent Freddie Mac Weekly Primary Mortgage Market Survey Rate for 30-year fixed-rate conforming mortgages (U.S. average), rounded to the nearest one-eighth of one percent (0.125%), as of the date the Modification Agreement is executed. Because the information on GNMA coupon rates is not as widely available as that of the Freddie Mac Market Survey Rate (which may be found online at *http://www.freddiemac.com/pmms/*, as well as in the list of Selected Interest Rates that the Federal Reserve Board publishes weekly in its Statistical Release H.15 at *http://www.federalreserve.gov/releases/h15/*), we are amending § 36.4315 to adopt a similar standard. Under § 36.4315(a)(8)(i), the interest rate on a modified VA-guaranteed loan (not held by a State housing-finance authority) may not exceed 50 basis points above the most recent Freddie Mac Weekly Primary Mortgage Market Survey Rate for 30-year fixed-rate conforming mortgages (U.S. average), rounded to the nearest one-eighth of one percent (0.125%), as of the date the Modification Agreement is executed.

Using the Freddie Mac Market Rate as a basis for computing the maximum interest rate on a modified loan establishes uniformity with another large Federal home loan program, and will enable loan servicers to more easily determine maximum allowable rates for loan modifications. This will enable veterans to receive the benefits of capitalization and/or extension on a modified loan, even if the present interest rate environment is higher than at loan origination. The majority of VA-guaranteed loans are in GNMA pools, which require servicers to "buy-out" the loans from the pools in order to modify them. GNMA determines the guidelines for determining when loans can be bought out of pools, and this interim final rule does not release loan holders from requirements under the contracts they have with GNMA. (For more details *see http://www.ginniemae.gov/apm/apm_pdf/10-01.pdf*). A servicer is then faced with the task of attempting to find another group of loans with similar interest rates in order to "repool" the modified loan. By allowing the modified loan rate to be the Freddie Mac rate plus 50 basis points, which is similar to that of other new VA-guaranteed loans being originated, the servicer will be better able to repool a modified loan and should be more willing to complete a modification.

Although monthly loan payments may increase slightly under the interim final rule due to capitalization or small increases in interest rates, elimination of the delinquency by modification will benefit individual veterans by avoiding

foreclosure and receiving a fresh start after resolving financial difficulties. However, we will require the servicer to submit to VA for prior approval any loan modification where the interest rate will increase more than one percent over the existing interest rate on the loan. This will provide us an opportunity to determine if it is perhaps more appropriate to utilize our authority under 38 U.S.C. 3732 to refund (purchase) the loan and modify the loan at a lower-than-market interest rate.

The second problem noted after the 2008 amendments concerns those items that may be included in a modified loan amount. After we proposed former § 36.4815 (redesignated as current § 36.4315), public comments suggested that the new modification procedures should provide for other expenses of modification. Under former § 36.4815, loan modification expenses could not be included in the modified loan amount. In the 2008 amendments, we allowed inclusion of unpaid principal, accrued interest, and deficits in the taxes and insurance impound accounts in the modified indebtedness. Also permitted were advances required to preserve the lien position, such as homeowner association fees, special assessments, and water and sewer liens. We specifically excluded other costs such as late fees, legal fees, and related foreclosure costs.

In Mortgagee Letter 2008–21, HUD issued a change in its position that allows foreclosure costs actually incurred to be capitalized into the modified loan balance. The Letter states that, in some cases where foreclosure had been initiated and the borrowers' circumstances had improved to the point that a modification could allow them to resume making regular monthly payments, HUD found the borrowers had insufficient funds to pay legal fees and other foreclosure costs. Therefore, the borrowers could not complete loan modifications without a change in the HUD loss-mitigation program. While the hope remains that modifications can be completed early in the course of a default—before accrual of costly fees and expenses—we realize that may not always be the case.

In order to allow veteran borrowers to avail themselves of the opportunity to retain homeownership by means of a loan modification (even after the foreclosure process has started), we are amending current § 36.4315 to allow legal fees and foreclosure costs to be capitalized into the modified loan balance. *See* § 36.4315(a)(10). Under paragraph (a)(10), VA is also allowing capitalization of the cost of a title insurance policy endorsement or other form of update on the modified loan. HUD requires that any late charges should be waived in connection with a modification to give the borrower a fresh start. VA agrees with this beneficial approach and has included it in § 36.4315(a)(11). The incentive paid for a successful loan modification should more than offset any lost late charge income due to the amendment requiring waiver of late charges when a loan is modified.

Finally, we are reorganizing § 36.4315 to clarify in paragraph (b) that holders may seek VA approval for a loan modification if the proposed modification does not otherwise meet the conditions prescribed in paragraph (a). Current § 36.4315(a) and (b) specifically include language stating that, without the prior approval of the Secretary of Veterans Affairs, a loan may be modified if the conditions of those sections are met. However, this structure does not adequately reflect our intent that a holder may seek prior approval for a loan modification that does not meet other conditions for modification. Therefore, this interim final rule redesignates current § 36.4315(b) through (i) as § 36.4315(a)(7) through (a)(14) to clarify that, if the paragraph (a) conditions are met, a loan may be modified without prior approval of the Secretary and that the holder may seek prior approval for a modification not meeting one of those conditions. In light of these clarifying amendments, we are deleting language in current paragraphs (a) and (b) that is unnecessary. A new paragraph (b) has been added to specifically state, rather than leave for inference, that if a loan fails to meet one or more of the conditions within the section, the holder must submit the loan file to the Secretary for approval before entering into any loan modification agreement. This new paragraph provides a guiding principle that the Secretary will approve such a request when he determines that it is in the best interests of the veteran and the Government after balancing the risks of non-approval versus approval despite the absence of one or more of the conditions identified in paragraph (a). Current § 36.4315(j) has been redesignated as § 36.4315(c) and notes that the provisions of § 36.4315 do not create a right to a loan modification, but simply authorizes the holder to modify a loan in certain situations without prior approval of the Secretary or upon the Secretary's approval in other situations.

Administrative Procedures Act

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), we find that there is good cause to dispense with advance public notice and opportunity to comment on this rule and good cause to publish this rule with an immediate effective date. This interim final rule is necessary to immediately allow private loan holders to assist more veteran borrowers by authorizing loan modifications under the new rules.

VA has seen monthly foreclosures of VA-guaranteed loans increase from 545 in September 2007 (the end of fiscal year 2007) to 1,328 in December 2009, to 2,054 in August of 2010 (the most recent data as of preparation of this document). Delay in the implementation of this rule could prevent some veteran borrowers from obtaining loan modifications, which will lead to additional foreclosures. This means that more veterans will lose their homes and their entitlement to VA loan guaranty benefits (unless the loss is repaid). It also means that more families will be displaced and have to begin the long road to financial and credit recovery, which can take years. Moreover, for each additional guaranty claim VA must make, the taxpayer must shoulder some of the financial responsibility.

Immediate implementation of the rule will not only assist veterans and other taxpayers, but will do so without having an adverse impact on the mortgage industry. The new rule will enable servicers to offer more loss mitigation opportunities and continue servicing VA-guaranteed loans, rather than seeing their servicing fees terminated as the loans are foreclosed.

We started tracking completed loan modifications after the 2008 amendments to VA's loan guaranty regulations. During fiscal year 2009 the number of modifications completed averaged 360 per month. However, there have been many direct inquiries from loan servicers asking about other loss mitigation options when State housing-finance authorities are unable to modify loans at lower interest rates. Other than VA refunding (purchasing) some of those loans and reducing the interest rates, there have been no other viable alternatives to help Veterans in those situations avoid foreclosure. Refunding by VA essentially replaces private financing with Government funds, and requires a substantial initial investment that takes as long as 30 years to recover, so it may not always be the best option for the Government. The ability to complete loan modifications at existing interest rates will enable private loan servicers to help more veteran borrowers remain in their homes and avoid foreclosure. When veterans are able to reinstate delinquent loans by modifying their loans and avoiding foreclosure, VA will be required to pay

fewer claims under its loan guaranty. In addition, by allowing inclusion of legal fees for actual termination expenses incurred prior to modification, more veterans will be able to afford the other up-front expenses associated with modification and avoid foreclosure.

For the foregoing reasons, we have determined that delay in implementing these regulations is unnecessary, impractical under the circumstances, and contrary to the public interest. Accordingly, we are issuing this rule as an interim final rule with immediate effect.

Paperwork Reduction Act of 1995

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule will have no such effect on State, local, and Tribal governments, or on the private sector.

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by the Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this interim final rule have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866 because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, this rule was submitted to OMB for review.

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The vast majority of VA loans are serviced by very large financial companies. Only a handful of small entities service VA loans and they service only a very small number of loans. This interim final rule, which only impacts Veterans, other individual obligors with guaranteed loans, and companies that service VA loans, will have very minor economic impact on a very small number of small entities servicing such loans. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.114, Veterans Housing—Guaranteed and Insured Loans.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on November 1, 2010, for publication.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Indians, Individuals with disabilities, Loan programs—housing and community development, Loan programs—Indians, Loan programs—Veterans, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Veterans.

Dated: February 1, 2011

Robert C. McFetridge,

Director, Regulations Policy and Management, Department of Veterans Affairs.

For the reasons stated in the preamble, VA amends 38 CFR part 36 as follows:

PART 36—LOAN GUARANTY

■ 1. The authority citation for part 36 continues to read as follows:

Authority: 38 U.S.C. 501 and as otherwise noted.

■ 2. Revise § 36.4315 to read as follows:

§ 36.4315 Loan modifications.

(a) The terms of any guaranteed loan may be modified by written agreement between the holder and the borrower, without prior approval of the Secretary, if all of the following conditions are met:

(1) The loan is in default;

(2) The event or circumstances that caused the default has been or will be resolved and it is not expected to re-occur;

(3) The obligor is considered to be a reasonable credit risk, based on a review by the holder of the obligor's creditworthiness under the criteria specified in § 36.4340, including a current credit report. The fact of the recent default will not preclude the holder from determining the obligor is now a satisfactory credit risk provided the holder determines that the obligor is able to resume regular mortgage installments when the modification becomes effective based upon a review of the obligor's current and anticipated income, expenses, and other obligations as provided in § 36.4340;

(4) At least 12 monthly payments have been paid since the closing date of the loan;

(5) The current owner(s) is obligated to repay the loan, and is party to the loan modification agreement;

(6) The loan will be reinstated to performing status by virtue of the loan modification;

(7) A loan has not been modified more than once in a 3-year period or more than 3 times during the life of the loan;

(8) The loan as modified will bear a fixed-rate of interest, which—

(i) May not exceed the most recent Freddie Mac Weekly Primary Mortgage Market Survey Rate for 30-year fixed-rate conforming mortgages (U.S. Average), rounded to the nearest one-eighth of one percent (0.125%), as of the date the Modification Agreement is executed, plus 50 basis points;

(ii) After being determined and selected in accordance with paragraph

(i), is not more than one percent higher than the existing rate on the loan; or,

(iii) In the case of a loan in which a State, Territorial, or local governmental agency provided assistance to the veteran for the acquisition of the dwelling, and the law providing that assistance precludes any revision in the interest rate on the loan, then the interest rate on the modified loan is the same or less than that on the original note evidencing the loan;

(9) The unpaid balance of the modified loan will be re-amortized over the remaining life of the loan, or if the loan term is to be extended, the maturity date will not exceed the shorter of:

(i) 360 months from the due date of the first installment required under the modification, or

(ii) 120 months after the original maturity date of the loan (unless the original term was less than 360 months, in which case the term may be extended to 480 months from the due date of the first installment on the original loan);

(10) Only the following items may be included in the modified indebtedness: Unpaid principal; accrued interest; deficits in the taxes and insurance impound accounts; amounts incurred to pay actual legal fees and foreclosure costs related to the canceled foreclosure; the cost of a title insurance policy endorsement or other update for the modified loan; and advances required to preserve the lien position, such as homeowner association fees, special assessments, water and sewer liens, etc. Late fees and other charges may not be capitalized;

(11) The holder will not charge a processing fee, and all unpaid late fees will be waived. Any other actual costs incurred and legally chargeable, but which cannot be capitalized in the modified indebtedness, may be collected directly from the borrower as part of the modification process or waived, at the discretion of the servicer;

(12) Holders will ensure the first lien status of the modified loan;

(13) The dollar amount of the guaranty will not exceed the greater of:

(i) The original guaranty amount of the loan being modified (but if the modified loan amount is less than the original loan amount, then the amount of guaranty will be equal to the original guaranty percentage applied to the modified loan), or

(ii) 25 percent of the loan being modified subject to the statutory maximum specified at 38 U.S.C. 3703(a)(1)(B); and

(14) The obligor will not receive any cash back from the modification.

(b) If a loan fails to meet one or more of the conditions identified in paragraph (a), the holder must submit the loan file to the Secretary for approval before entering into any loan modification agreement. The Secretary will grant such approval if the Secretary determines that the modification is in the best interests of the veteran and the Government after balancing the risks of non-approval versus approval despite the absence of one or more of the conditions identified in paragraph (a) of this section.

(c) This section does not create a right of a borrower to have a loan modified, but simply authorizes the loan holder to modify a loan in certain situations without the prior approval of the Secretary.

[FR Doc. 2011–2566 Filed 2–4–11; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–0552; FRL–9262–7]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; 2002 Base Year Emissions Inventory, Reasonable Further Progress Plan, Contingency Measures, Reasonably Available Control Measures, and Transportation Conformity Budgets for the Pennsylvania Portion of the Philadelphia-Wilmington-Atlantic City 1997 8-Hour Moderate Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision being approved contains a 2002 base year emissions inventory, a reasonable further progress (RFP) plan, RFP contingency measures demonstration, and reasonably available control measure (RACM) demonstration for the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City moderate 1997 8-hour ozone nonattainment area. This rulemaking applies only to the Pennsylvania portion of this multi-state nonattainment area—an area that also lies in part in New Jersey, Maryland, and Delaware. EPA is simultaneously approving transportation conformity motor vehicle emissions budgets (MVEBs) associated with this same SIP revision. EPA is approving this SIP revision because it satisfies Clean Air Act (CAA) requirements for the 2002 emissions inventory, RFP, RACM, RFP contingency measures, and transportation conformity requirements—as defined by the CAA for areas classified as moderate nonattainment for the 1997 8-hour ozone national ambient air quality standard (NAAQS). EPA is approving the SIP revision in accordance with the requirements of the CAA and EPA regulations.

DATES: This final rule is effective on March 9, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2010–0552. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Brian Rehn, (215) 814–2176, or by e-mail at *rehn.brian@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever "we," "us," or "our" is used, we mean EPA. On November 5, 2010 (75 FR 68251), EPA published a notice of proposed rulemaking (or proposed rulemaking) for the Commonwealth of Pennsylvania. The notice of proposed rulemaking proposed EPA's approval of Pennsylvania's 2002 base year emissions inventory, RFP plan, RFP contingency measures, RACM, and MVEBs for the Commonwealth's portion of the Philadelphia-Wilmington-Atlantic City moderate 1997 8-hour ozone nonattainment area. EPA is approving the SIP revision because it satisfies the emissions inventory, RFP, RACM, RFP contingency measures, and transportation conformity requirements

of section 110 and part D of the CAA and associated EPA regulations. This SIP revision was formally submitted by the Pennsylvania Department of Environmental Protection (PA DEP) on August 29, 2007, and was formally amended by PA DEP on December 10, 2009 and again on April 12, 2010.

II. Summary of SIP Revision

The SIP revision (and subsequent SIP amendments) address the emissions inventory, RFP, RACM, and RFP contingency measures requirements for the 1997 8-hour ozone NAAQS for the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City 8-hour ozone moderate nonattainment area. The SIP revision also establishes MVEBs for 2008. Other specific requirements of Pennsylvania's August 29, 2007 SIP revision (as amended in December 2009 and April 2010) for the Philadelphia-Wilmington-Atlantic City 8-hour ozone nonattainment area and EPA's rationale for our proposed action are explained in the November 5, 2010 proposed rulemaking and will not be restated here. A more detailed description of the August 2007 SIP revision, as well as the substance of each of the subsequent SIP amendments is discussed in detail in EPA's November 5, 2010 proposed rulemaking. No public comments were received on EPA's November 2010 proposed rulemaking.

III. Final Action

EPA is approving the 2002 base year emissions inventory; the 2008 ozone projected emission inventory; the 2008 RFP plan; RFP contingency measures; RACM analysis; and 2008 transportation conformity budgets for the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City 8-hour ozone nonattainment area, contained in Pennsylvania's August 29, 2007 SIP revision (as formally amended by Pennsylvania in December 2009 and April 2010) for the Philadelphia-Wilmington-Atlantic City 8-hour ozone nonattainment area. The SIP revision satisfies the requirements for 1997 8-hour ozone NAAQS nonattainment areas classified as moderate and demonstrates reasonable further progress in reducing ozone precursors.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 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.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 8, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action to approve the emission inventory, RFP demonstration, RACM determination, RFP contingency measures, and MVEBs may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: January 24, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by adding, at the end of the table, entries for "Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures, and RFP Contingency Measures"; 2002 Base Year Emissions Inventory for Volatile Organic Compounds (VOC), Nitrogen Oxides (NO_X), and Carbon Monoxide (CO)"; and "2008 RFP Transportation Conformity Motor Vehicle Emission Budgets" to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Reasonable Further Progress Plan (RFP), Reasonably Available Control Measures, and RFP Contingency Measures.	Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City, PA–DE–MD–NJ 1997 8-hour ozone moderate nonattainment area.	8/29/07, 12/10/09, 4/12/10).	2/7/11 [Insert page number where the document begins].	
2002 Base Year Emissions Inventory for Volatile Organic Compounds (VOC), Nitrogen Oxides (NO_X), and Carbon Monoxide (CO).	Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City, PA–DE–MD–NJ 1997 8-hour ozone moderate nonattainment area.	8/29/07, 12/10/09, 4/12/10.	2/7/11 [Insert page number where the document begins].	
2008 RFP Transportation Conformity Motor Vehicle Emission Budgets.	Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City, PA–DE–MD–NJ 1997 8-hour ozone moderate nonattainment area.	8/29/07, 12/10/09, 4/12/10.	2/7/11 [Insert page number where the document begins].	

* * * * *

■ 3. Section 52.2036 is amended by revising the section heading and by adding paragraph (o) to read as follows:

§ 52.2036 Base Year Emissions Inventory.

* * * * *

(o) EPA approves as a revision to the Pennsylvania State Implementation Plan the 2002 base year emissions inventories for the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City, PA-DE-MD-NJ 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Pennsylvania Department of Environmental Protection on August 29, 2007 (as formally amended by Pennsylvania on December 10, 2009 and on April 12, 2010). This submittal consists of the 2002 base year point, area, non-road mobile, and on-road mobile source emission inventories for this area, for the following pollutants: Volatile organic compounds (VOC), carbon monoxide (CO) and nitrogen oxides (NO_X).

■ 4. Section 52.2037 is amended by adding paragraphs (o) and (p) to read as follows:

§ 52.2037 Control strategy plans for attainment and rate-of-progress: Ozone.

* * * * *

(o) EPA approves revisions to the Pennsylvania State Implementation Plan consisting of the 2008 reasonable further progress (RFP) plan, reasonably available control measure demonstration, and contingency measures for the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City, PA-DE-MD-NJ 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Pennsylvania Department of Environmental Protection on August 29, 2007 (as formally amended by Pennsylvania on December 10, 2009 and April 12, 2010).

(p) EPA approves the following 2008 RFP motor vehicle emissions budgets (MVEBs) for the Pennsylvania portion of the Philadelphia-Wilmington-Atlantic City, PA-DE-MD-NJ 1997 8-hour ozone moderate nonattainment area submitted by the Secretary of the Pennsylvania Department of Environmental Protection on August 29, 2007 (as formally amended by Pennsylvania on December 10, 2009):

TRANSPORTATION CONFORMITY EMISSIONS BUDGETS FOR THE PENNSYLVANIA PORTION OF THE PHILADELPHIA-WILMINGTON-ATLANTIC CITY, PA-DE-MD-NJ AREA

Type of control strategy SIP	Year	VOC (TPD)	NO_X (TPD)	Effective date of adequacy determination or SIP approval
Rate of Progress Plan	2008	61.09	108.78	January 5, 2009 (73 FR 77682), published December 19, 2008.

[FR Doc. 2011–2604 Filed 2–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2009–0962; FRL–9261–9]

North Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: North Carolina has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize North Carolina's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on April 8, 2011 unless EPA receives adverse written comment by March 9, 2011. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2009–0962 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: johnson.otis@epa.gov.*
- *Fax:* (404) 562–9964 (prior to faxing, please notify the EPA contact listed below).
- *Mail:* Send written comments to Otis Johnson, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.
- *Hand Delivery or Courier:* Deliver your comments to Otis Johnson, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Instructions: We must receive your comments by March 9, 2011. Please refer to Docket Number EPA–R04–RCRA–2009–0962. 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.

You may view and copy North Carolina's application and associated publicly available materials from 8 a.m. to 4 p.m. at the following locations: EPA, Region 4, RCRA Division, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, telephone number: (404) 562–8500 and the North Carolina Department of Environment and Natural Resources, 401 Oberlin Road, Suite 150, Raleigh, North Carolina 29201; telephone number: (919) 733–2178. Interested persons wanting to examine these documents should make an appointment with the office at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303; telephone number: (404) 562–8481; fax number: (404) 562–9964; e-mail address: *johnson.otis@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to state programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What decisions have we made in this rule?

We conclude that North Carolina's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant North Carolina final authorization to operate its hazardous waste program with the changes described in the authorization application. North Carolina has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in North Carolina, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision is that a facility in North Carolina subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. North Carolina has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports,
- Enforce RCRA requirements and suspend or revoke permits, and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which North Carolina is being authorized by today's action are already effective, and are not changed by today's action.

D. Why wasn't there a proposed rule before this rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register**, we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if EPA receives comments that oppose this action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal**

Register withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has North Carolina previously been authorized for?

North Carolina initially received Final authorization on December 14, 1984, effective December 31, 1984 (49 FR 48694) to implement its base hazardous waste management program. EPA granted authorization for changes on March 25, 1986, effective April 8, 1986 (51 FR 10211); August 5, 1988, effective October 4, 1988 (53 FR 1988); February 9, 1989, effective April 10,1989 (54 FR 6290); September 22, 1989, effective November 21, 1989 (54 FR 38993); January 18, 1991, effective March 19, 1991 (56 FR 1929); April 10, 1991, effective June 9, 1991 (56 FR 14474); July 19, 1991, effective September 17, 1991 (56 FR 33206); April 27, 1992, effective June 26, 1992 (57 FR 15254); December 12, 1992, effective February 16, 1993 (57 FR 59825); January 27, 1994, effective March 28, 1994 (59 FR 3792); April 4, 1994, effective June 3, 1994 (59 FR 15633); June 23, 1994, effective August 22, 1994 (59 FR 32378); November 10, 1994, effective January 9, 1995 (59 FR 56000); September 27, 1995, effective November 27, 1995 (60 FR 49800); April 25, 1996. effective June 24, 1996 (61 FR 18284); October 23, 1998, effective December 22, 1998 (63 FR 56834); August 25, 1999, effective October 25, 1999 (64 FR 46298); February 28, 2002, effective April 29, 2002 (67 FR 9219); December 14, 2004, effective February 14, 2005 (69 FR 74444) and March 23, 2005, effective May 23, 2005 (70 FR 14556).

G. What changes are we authorizing with this action?

On September 1, 2006 and February 13, 2007, North Carolina submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. EPA makes an immediate final decision, subject to receipt of comments that oppose this action, that North Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant final authorization for the following program changes:

Description of Federal requirement	**Federal Register** date and page	Analogous State authority [1]
206—Nonwastewaters from Productions of Dyes, Pigments, and Food, Drug, and Cosmetic Colorants.	70 FR 9138, 02/24/05	15A NCAC 13A.0106(a), (d), & (e), 15A NCAC 13A.0112(b), (c).
207—Uniform Hazardous Waste Manifest Rule	70 FR 10776, 03/04/05	15A NCAC 13A.0102(b), 15A NCAC 13A.0106(a), (b), 15A NCAC 13A.0107(b), (c), (e), (f), (i), 15A NCAC 13A.0108(b), 15A NCAC 13A.0109(f), 15A NCAC 13A.0110(e).

[1] The North Carolina provisions for RCRA Cluster XV are from the North Carolina Hazardous Waste Management Rules 15A NCAC 13A, effective April 23, 2006 and November 1, 2007.

H. Where are the revised State rules different from the Federal rules?

There are no State requirements that are more stringent or broader in scope than the Federal requirements.

I. Who handles permits after the authorization takes effect?

North Carolina will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. We will not issue any more permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which North Carolina is not authorized.

J. What is codification and is EPA codifying North Carolina's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA does this by referencing the authorized State rules in 40 CFR part 272. EPA reserves the amendment of 40 CFR part 272, subpart II for this authorization of North Carolina's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State

authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective April 8, 2011, unless objections to this authorization are received.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b), of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: January 6, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–2496 Filed 2–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2010–0810; FRL–9262–2]

Florida: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Florida has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Florida's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on April 8, 2011 unless EPA receives adverse written comment by March 9, 2011. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2010–0810 by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: johnson.otis@epa.gov.*
- *Fax:* (404) 562–9964 (prior to faxing, please notify the EPA contact listed below).
- *Mail:* Send written comments to Otis Johnson, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.
- *Hand Delivery or Courier.* Deliver your comments to Otis Johnson, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

Instructions: We must receive your comments by March 9, 2011. Please refer to Docket Number EPA–R04–RCRA–2010–0810. 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.

You may view and copy Florida's application and associated publicly available materials from 8 a.m. to 4 p.m. at the following locations: EPA, Region 4, RCRA Division, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; telephone number: (404) 562–8500 and the Florida Department of Environmental Protection, Bob Martinez Center, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400; telephone number: (850) 245–8713. Interested persons wanting to examine these documents should make an appointment with the office at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency,

The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303; telephone number: (404) 562–8481; fax number: (404) 562–9964; e-mail address: *johnson.otis@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What decisions have we made in this rule?

We conclude that Florida's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Florida final authorization to operate its hazardous waste program with the changes described in the authorization application. Florida has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Florida, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

The effect of this decision is that a facility in Florida subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Florida has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports,
- Enforce RCRA requirements and suspend or revoke permits, and
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Florida is being authorized by today's action are already effective, and are not changed by today's action.

D. Why wasn't there a proposed rule before this rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register**, we are publishing a separate document that proposes to authorize the State program changes.

E. What happens if EPA receives comments that oppose this action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What has Florida previously been authorized for?

Florida initially received Final authorization on January 29, 1985, effective February 12, 1985 (50 FR 3908), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on December 1, 1987, effective March 3, 1988 (52 FR 45634); December 16, 1988, effective January 3, 1989 (53 FR 50529); December 14, 1990, effective February 12, 1991 (55 FR 51416); February 5, 1992, effective April 6, 1992 (57 FR 4371); February 7, 1992, effective April 7, 1992 (57 FR 4738); May 20, 1992, effective July 20, 1992 (57 FR 21351); November 9, 1993, effective January 10, 1994 (58 FR 59367); July 11, 1994, effective September 9, 1994 (59 FR 35266); April 16, 1994, effective October 17, 1994 (59 FR 41979); October 26, 1994, effective December 27, 1994 (59 FR 53753); April 1, 1997, effective June 2, 1997 (62 FR 15407); August 23, 2001, effective October 22, 2001 (66 FR 44307); August 20, 2002, effective October 21, 2002 (67 FR 53886 and 67 FR 53889); October 14, 2004, effective December 13, 2004 (69 FR 60964). The authorized Florida program, through RCRA Cluster IV, was incorporated by reference into the CFR on January 20, 1998, effective March 23, 1998 (63 FR 2896). Florida received authorization for the corrective action program on September 18, 2000, effective November 18, 2000 (65 FR 56256). Florida received additional authorization to its program for RCRA Clusters XI through XV on August 10, 2007, effective October 9, 2007 (72 FR 44973).

G. What changes are we authorizing with this action?

On August 27, 2007 and August 28, 2008, Florida submitted final complete program revision applications, seeking authorization of its changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of comments that oppose this action, that Florida's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant final authorization for the following program changes:

Description of Federal requirement	**Federal Register** date and page	Analogous state authority [1]
209—Universal Waste Rule: Specific Provisions for Mercury Containing Equipment.	70 FR 45507, 08/05/05	Rules 62–730.020(1), 62–730.030(1), 62–730.180(1) & (2), 62–730.183, 62–730.220(1), 62–730.185(1) Florida Administrative Code (F.A.C.)
212—NESHAP; MACT (Phase I Final Replacement Standards and Phase II).	70 FR 59401, 10/12/05	62–730.021, 62–730.180(1) & (2), 62–730.181(1), 62–730.220(1) F.A.C.
213—Burden Reduction Initiative	71 FR 16862, 04/04/06	62–730.020(1), 62–730.021, 62–730.030(1), 62–730.180(1) & (2), 62–730.181(1), 62–730.183, 62–730.220(1) F.A.C.
214—Corrections to Errors in the Code of Federal Regulations.	71 FR 40254, 07/14/06	62–730.020(1), 62–730.021, 62–730.030(1), 62–730.160(1), 62–730.180(1) & (2), 62–730.181(1), 62–730.183, 62–730.220(1), 62–730.185(1) F.A.C.
215—Cathode Ray Tubes	71 FR 42928, 07/28/06	62–730.020(1), 62–730.030(1) F.A.C.
(No Checklist) Standards for Universal Waste Management.	72 FR 35666, 06/29/07	62–730.185(1) F.A.C.
State Initiated Changes to the Previously Authorized Program.	.....	62–730.210, 62–730.225(1), and 62–730.186 F.A.C.

[1] The Florida provisions are from the Florida Administrative Codes effective November 11, 2006, April 22, 2007, May 1, 2007, and April 25, 2008.

H. Where are the revised State rules different from the Federal rules?

Florida has added hazardous pharmaceutical waste to the list of wastes that may be managed under the Universal Waste rule. This makes Florida's Universal Waste rule broader in scope than the Federal regulation.

I. Who handles permits after the authorization takes effect?

Florida will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until they expire or are terminated. EPA will not issue any more permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Florida is not authorized.

J. What is codification and is EPA codifying Florida's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart K for this authorization of Florida's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a

report containing this document 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 in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective April 8, 2011, unless objections to this authorization are received.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b), of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Dated: January 6, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–2499 Filed 2–4–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 0911201413–1051–02]

RIN 0648–AY38

Pacific Halibut Fisheries; Guided Sport Charter Vessel Fishery for Halibut; Recordkeeping and Reporting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to amend the recordkeeping and reporting requirements for the Pacific halibut guided sport fishery in International Pacific Halibut Commission Regulatory Area 2C (Southeast Alaska) and Area 3A (Central Gulf of Alaska). These regulations revise the Federal requirements for submission of Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheets, modify the logbook recording requirements, and add a definition of fishing week. This action is necessary to improve consistency between Federal and State of Alaska requirements for the submission of the logbook data sheets and address recent changes by the State to the logbook reporting format. This action is intended to achieve the halibut fishery management goals of the North Pacific Fishery Management Council and to support the conservation and management provisions of the Northern Pacific Halibut Act of 1982.

DATES: Effective March 9, 2011.

ADDRESSES: Electronic copies of the Categorical Exclusion, the Regulatory Impact Review, and the Final Regulatory Flexibility Analysis prepared for this action may be obtained from *http://www.regulations.gov* or from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection of information requirements contained in this rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, AK; and by e-mail to *OIRA_Submission@omb.eop.gov* or by fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Gabrielle Aberle, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC) and National Marine Fisheries Service (NMFS) manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed in Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed in Washington, DC, on March 29, 1979).

Regulations developed by the IPHC are subject to approval by the Secretary of State with concurrence of the Secretary of Commerce (Secretary). After approval by the Secretary of State and the Secretary, the IPHC regulations are published in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The current IPHC annual management measures were published on March 18, 2010 (75 FR 13024). IPHC regulations affecting sport fishing for halibut and charter vessels in Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska) may be found in sections 3, 25, and 28 (75 FR 13024; March 18, 2010).

The Halibut Act also provides regulatory authority to the Secretary and the North Pacific Fishery Management Council (Council). The Secretary, under 16 U.S.C. 773c(a) and (b), has the general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating. Under 16 U.S.C. 773c(c), the Council may develop halibut fishery regulations, for its geographic area of concern, that apply to U.S. nationals or vessels. Such an action by the Council is limited to regulations that are in addition to, and not in conflict with, IPHC regulations. Council-developed regulations may be implemented by NMFS only after approval by the Secretary. Using its authority under the Halibut Act, the Council is developing a regulatory program to manage the guided sport charter vessel fishery for halibut. One step in the development of that program was the implementation of a one-halibut daily bag limit on charter vessel anglers in IPHC Area 2C in order to limit their overall harvest to approximately the established guideline harvest level (74 FR 21194; May 6, 2009).

Background and Need for Action

The final regulations implementing the one-halibut daily bag limit program include recordkeeping and reporting measures codified at 50 CFR 300.65 that require the submission of Alaska Department of Fish and Game (ADF&G) Saltwater Sport Fishing Charter Trip Logbook (charter logbook) data sheets for halibut charter vessels operating in IPHC Areas 2C and 3A (74 FR 21194; May 6, 2009). This action amends these recordkeeping and reporting measures, and is necessary to (1) improve consistency between Federal regulations and State of Alaska (State) logbook instructions for the submission of the data sheets, and (2) address recent changes by the State to the charter logbook reporting format. This action is administrative in nature; it revises the recordkeeping and reporting burden on guided charter operators in IPHC Areas 2C and 3A, reduces potential confusion by the regulated public, and facilitates efficient reporting of halibut caught and retained in these areas.

The proposed rule for this action was published in the **Federal Register** on April 27, 2010 (75 FR 22070), and the public comment period ended on May

12, 2010. The preamble to the proposed rule describes the need for this action and the proposed regulatory amendments. The final rule makes changes to the proposed regulatory text in response to public comments received on the proposed rule and to clarify the intent of the regulations.

Regulatory Amendments

1. A definition of "Fishing week" is added to § 300.61 for purposes of § 300.65(d). This definition is added to the final rule and is discussed under the heading "Changes from the Proposed Rule."

2. In § 300.65(d)(1)(i), the location and deadlines for submitting charter logbook data sheets are revised to match State regulations that allow the data sheets to be submitted to any regional or area ADF&G office within a specified amount of time from when the fishing activity occurred. The Federal deadlines are changed from those presented in the proposed rule as a result of comments received, and are further described in the section "Changes from the Proposed Rule."

3. Paragraph (d)(1)(iii) is added to § 300.65 and replaces paragraphs (d)(2)(iv)(B)(*4*) and (d)(3) of this section, which are removed. The new paragraph retains the requirement to complete and submit separate logbook data sheets for each regulatory area if halibut were caught and retained in IPHC Regulatory Areas 2C and 3A during the same charter vessel fishing trip. The instruction for recording the IPHC regulatory area fished on the data sheet is revised because of recent changes by the State to the data sheet format. Minor changes were made to the regulatory text presented in the proposed rule as a result of comments received. These changes are described in the section "Changes from the Proposed Rule."

4. Section 300.65(d)(2)(iv) is revised to clarify recordkeeping and reporting requirements, and to more accurately reflect the intent of this regulation. These revisions were not included in the proposed rule, and are discussed under the heading "Changes from the Proposed Rule."

5. Two additional revisions are necessary because of the revised data sheet format. The final rule revises the instruction, in § 300.65(d)(2)(iv)(A), regarding the location of the charter vessel angler's signature on the data sheet and eliminates the requirement, in § 300.65(d)(2)(iv)(B)(*1*), to record the sport fishing operator business license number on the data sheet as the revised data sheet no longer includes this field.

Changes From the Proposed Rule

In the final rule, the following regulatory and technical changes are made from the proposed rule. These changes clarify the Federal regulations and increase consistency between the Federal and State charter logbook recordkeeping and reporting requirements.

1. A definition of "Fishing week" is added to § 300.61. The State's charter logbook submission deadlines are based on the week that the fishing activity occurs for fishing activity conducted on or after the first Monday in April through December 31. Therefore, to ensure consistency between the Federal and State charter logbook submission requirements, a definition of "Fishing week" that corresponds to the State's usage is added to § 300.61 to clarify the Federal submission deadlines specified in § 300.65(d)(1)(i).

2. In response to comments from ADF&G (*see* comment 1 under "Comments and Responses" section), the charter logbook data sheet submission deadlines in § 300.65(d)(1)(i) are changed to match the State deadlines. These deadlines were implemented previously with the final rule implementing the one-halibut daily bag limit for charter vessel anglers in IPHC Area 2C (74 FR 21194; May 6, 2009). As stated in the preamble to the proposed rule for that final rule, the "logbook data sheets would be required to be submitted to the appropriate ADF&G office according to the time schedule described in the instructions at the beginning of the logbook" (74 FR 78279; December 22, 2008). However, neither the deadlines originally implemented nor the revisions proposed in the proposed rule for this final rule, matched the State's schedule. The instructions and submission schedule in the ADF&G charter logbook require that data sheets be submitted no later than the second Monday in April for fishing activity that occurs prior to the first Sunday in April, and no later than 14 days after the first day of the week in which the fishing activity occurred for fishing activity that occurs on or after the first Monday in April through December 31.

The final rule changes the deadline dates in § 300.65(d)(1)(i) to match the State's deadlines, and changes the event on which the deadlines are based from the date the charter vessel fishing trip ends to when the halibut are caught and retained. Although the phrase "fishing activity" is used in the charter logbook instructions to identify the event that triggers the deadline, the final rule uses "when the halibut were caught and retained," as the regulations in § 300.65(d) are applicable only to guided halibut fishing. These changes from the proposed rule will not create an additional reporting burden on charter vessel operators because they are already required by the State to meet these deadlines.

3. In response to comments from ADF&G (*see* comment 3 under "Comments and Responses" section), revisions are made to the regulatory text in § 300.65(d)(1)(iii). These revisions use the language suggested by ADF&G in their letter of comment and do not change the requirements in this paragraph from those presented in the proposed rule. The final rule continues to require that separate charter logbook data sheets be completed for IPHC Area 2C and Area 3A if halibut were caught and retained in both regulatory areas during the same charter vessel fishing trip. The final rule also continues to require that the completed data sheets for each IPHC regulatory area must indicate the primary statistical area in which the halibut were caught and retained.

4. Section 300.65(d)(2)(iv) is revised to clarify the recordkeeping and reporting requirements and to more accurately reflect the intent of this regulation. Paragraph (d)(2)(iv) describes the Federal recordkeeping and reporting requirements that must be complied with by each charter vessel angler and charter vessel guide onboard a vessel in IPHC Area 2C if halibut were caught and retained. These requirements were originally added in the 2009 final rule, which implemented the one-halibut daily bag limit for charter vessel anglers in IPHC Area 2C (74 FR 21194; May 6, 2009). As discussed in the preamble to the proposed rule for that rule, these requirements are necessary to enforce that rule (73 FR 78279; December 22, 2008).

This final rule adds language to the introductory text in paragraph (d)(2)(iv) to specify that these requirements must be complied with by the end of the day or by the end of the charter vessel fishing trip, whichever comes first. As this additional regulatory text is applicable to all of paragraph (iv), paragraphs (d)(2)(iv)(A) and (B) are revised to eliminate redundant language and to clarify the recordkeeping and reporting requirements. The additional text corresponds to requirements in the charter logbook instructions, which specify that the logbook data page must be completed at the end of each trip or, for multiple-day trips, at the end of each day. The additional text is consistent with the original intent of the regulation

(74 FR 21194; May 6, 2009). Ensuring that data is recorded contemporaneously or as close as possible to the action being recorded will help enforcement personnel identify violations, and will lead to more reliable logbook data and more accurate estimates of guided charter harvests.

Comments and Responses

The proposed rule was published in the **Federal Register** on April 27, 2010 (75 FR 22070), with a 15-day comment period that ended on May 12, 2010. NMFS received a total of two letters. One letter was from an individual and contained comments that were outside the scope of this action. The second letter, which was submitted by ADF&G, supported the objectives of this action and recommended changes to the regulatory text. A summary of the comments from ADF&G and NMFS' responses follows.

Comment 1: The proposed rule states, "The submission deadline for a charter vessel fishing trip ending April 5 through December 31, during which halibut were retained, would be extended from 7 to 14 days after the end of the trip." This change to the submission deadlines for trips ending between April 5 and December 31 would remain inconsistent with state requirements, being more liberal than state regulations whenever a trip ended on a Tuesday through Sunday.

A possible result of implementing these regulatory changes is that charter operators fishing after early April could be cited by the state for overdue logbooks, even though they would be in compliance with Federal submission requirements.

The proposed rule also states, "The submission deadline for data sheets for a charter vessel fishing trip ending February 1 through April 4, during which halibut were retained, would be submitted no later than April 12." While this requirement is consistent with the ADF&G logbook submission requirements for 2010, it will remain inconsistent in most other years unless regulations are revised annually. ADF&G logbook submission requirements are different early in the year (February 1 through early April) and later in the year (after early April). The cutoff date for this early period is the first Sunday in April; therefore, the date can change every year.

Charter operators fishing in early April could be cited under state or Federal rules during most years when state and Federal logbook submission deadlines are inconsistent.

Response: NMFS agrees with the comment. As one objective of this rule is to improve consistency between Federal and State charter logbook data sheet submission requirements, this final rule revises the Federal deadlines in § 300.65(d)(1)(i) to match the State deadlines. A definition of "Fishing week" is added in § 300.61 to clarify the deadlines for submitting the data sheets. These changes are described in the section "Changes from the Proposed Rule."

Comment 2: ADF&G revised statistical areas along the boundary between IPHC Regulatory Areas 2C and 3A so that regulatory areas where halibut were caught and retained can be identified. ADF&G updated the maps to reflect the revised statistical areas, and has been distributing the updated maps with logbooks to Southeast Alaska charter operators. Charter businesses are being advised to use only maps with the year 2010 printed on them.

Response: NMFS notes that ADF&G has updated the statistical area maps and is distributing these to Southeast Alaska charter operators. As described in the proposed rule, because the updated charter logbook maps are available to charter vessel operators, this rule removes § 300.65(d)(2)(iv)(B)(*4*) and § 300.65(d)(3) and adds § 300.65(d)(1)(iii) to instruct how to record halibut caught and retained in IPHC Regulatory Areas 2C and 3A.

Comment 3: The proposed rule states, "This paragraph [§ 300.65(d)(1)(iii)] would require the charter vessel guide to record on the charter vessel logbook data sheets the primary ADF&G statistical area where halibut were caught and retained." The requirement that all operators in Area 2C or Area 3A report the statistical area where halibut were caught contradicts the instructions and examples provided in the 2010 ADF&G charter logbook. ADF&G logbook instructions require operators to report the statistical area where most of the salmon or bottomfish (not halibut specifically) were caught or targeted. Operators are instructed to report a salmon statistical area if salmon were targeted, a bottomfish statistical area if bottomfish were targeted, and both a salmon and bottomfish statistical area if both were targeted. Operators are not required under State rules to report the statistical area where halibut or any other bottomfish are caught incidentally while targeting salmon. State rules do not require operators to report the statistical area of halibut harvest specifically. In many, but not all cases, halibut are likely to be the primary bottomfish species caught.

For example, if a vessel targets salmon but incidentally catches a few halibut, the operator is instructed to report the primary statistical area where salmon were targeted, and the number of boat hours fished for salmon. They are not required to report the statistical area of the halibut harvest. Likewise, if a vessel targeted lingcod and a few halibut were caught incidentally, the operator would be required to report the primary statistical area where most bottomfish (not specifically halibut) were targeted. In many cases it would be the same statistical area, but not necessarily so.

Response: Section 300.65(d)(1)(iii) requires that if halibut are caught and retained in IPHC regulatory Area 2C and Area 3A during the same charter vessel fishing trip, a separate charter logbook data sheet must be completed for each IPHC regulatory area, to record the halibut kept in each IPHC regulatory area. As the State's revisions to the data sheet eliminated the field to record the IPHC regulatory area, § 300.65(d)(1)(iii) requires that the data sheets for each IPHC regulatory area must indicate the primary statistical area where the halibut were caught and retained. This information is necessary to identify the IPHC regulatory area where the halibut were caught and retained. The final rule revises § 300.65(d)(1)(iii) to use regulatory language suggested by ADF&G in their letter of comment, but does not change the requirements in this paragraph from those presented in the proposed rule.

Comment 4: ADF&G supports the requirement for vessels that harvest halibut in both Area 2C and Area 3A on a given trip to complete a separate logbook page for each regulatory area to associate halibut harvest with the appropriate IPHC regulatory area. This requirement is included on page vi of the 2010 ADF&G charter logbook instructions.

Response: NMFS notes the support for this requirement.

Classification

Regulations governing the U.S. fisheries for Pacific halibut are developed by the IPHC, the Pacific Fishery Management Council, the Council, and the Secretary. Section 5 of the Halibut Act allows the Regional Council having authority for a particular geographical area to develop regulations governing the allocation and catch of halibut in U.S. Convention waters as long as those regulations do not conflict with IPHC regulations. The Halibut Act at section 773c(a) and (b) provides the Secretary with the general responsibility to carry out the Convention with the authority to, in consultation with the

Secretary of the department in which the U.S. Coast Guard is operating, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary has delegated his Halibut Act authority to NMFS. This action is consistent with the North Pacific Halibut Act and other applicable laws.

Executive Order 12866

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) was prepared, which describes the economic impact of this final rule on small entities. The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA and NMFS' responses to those comments, if any, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (*see* **ADDRESSES**). A description of this action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the **SUMMARY** section of the preamble.

The IRFA was described in the Classification section to the proposed rule, and the public was notified of how to obtain a copy of the IRFA. The public comment period ended on May 12, 2010. No comments were received on the IRFA or on the economic impacts of the rule.

This action increases consistency between Federal and State charter logbook recordkeeping and reporting requirements for halibut charter vessels operating in IPHC Area 2C and Area 3A and is expected to impose *de minimis* costs. The only substantive change (modification of regulatory limits on directly regulated entities) revises requirements on the location and time frame for submission of logbook data sheets for charter vessel fishing trips during which halibut were caught and retained.

This action only affects halibut charters operating in IPHC Area 2C and Area 3A. Based on State charter logbook data, NMFS estimates that 404 business entities will be directly regulated by this action in Area 2C, and that 450 business entities will be directly regulated by this action in Area 3A. The Secretary has published a final rule that will implement limited entry in the Pacific halibut guided sport charter fisheries in Areas 2C and 3A (75 FR 554, January 5, 2010). NMFS expects that when the limited entry program is fully implemented in 2011, the number of business entities directly regulated by this action will be 231 in Area 2C and 296 in Area 3A.

The largest of these business entities, which are lodges, may be large entities under Small Business Act (SBA) standards, but that determination cannot be empirically confirmed at present. Therefore, these operations are treated as small entities for the purpose of this analysis. All the other charter operations are also considered small entities, based on SBA criteria, since they are believed to have gross revenues of less than $7.0 million on an annual basis, from all sources, including affiliates.

The FRFA did not identify any new projected reporting, recordkeeping, and other compliance requirements associated with these regulatory changes. It is expected that by conforming the Federal regulatory requirements with those of the State, affected entities will see increased efficiencies and decreased costs of compliance for both sets of rules.

The FRFA did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

There is no alternative to the proposed action that would accomplish its goals of conservation of the halibut resource and that would have a smaller burden on directly regulated small entities. Of the two alternatives considered, this action and status quo, the regulatory burden under status quo would be higher because the public would need to comply with two different sets of regulatory requirements. This action reduces the regulatory burden by increasing consistency between the Federal and State recordkeeping and reporting requirements, which minimizes the potential negative impacts that could arise under status quo.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS Alaska Region has developed an Internet site that provides easy access to details of this final rule, including a link to the final rule and links to additional information and regulations applicable to guided sport fishing for halibut in Alaska. The relevant information available on the Web site is the Small Entity Compliance Guide. The Web site address is *http://www.alaskafisheries.noaa.gov/sustainablefisheries/halibut/sport.htm.* Copies of this final rule are available upon request from the NMFS Alaska Regional Office (*see* **ADDRESSES**).

Collection of Information

This final rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA), which has been approved by the Office of Management and Budget (OMB) under control number 0648–0575. The public reporting burden for charter vessel guide respondents to fill out and submit logbook data sheets is estimated to average four minutes per response. The public reporting burden for charter vessel anglers to sign the logbook is estimated to be one minute per response. These estimates include the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (*see* **ADDRESSES**) and by e-mail to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

Dated: February 2, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

■ 1. The authority citation for 50 CFR part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.61, add a definition for "Fishing week" in alphabetical order to read as follows:

§ 300.61 Definitions.

* * * * *

Fishing week, for purposes of § 300.65(d), means a time period that begins at 0001 hours, A.l.t., Monday morning and ends at 2400 hours, A.l.t., the following Sunday night.

* * * * *

■ 3. In § 300.65:

■ a. Remove paragraphs (d)(2)(iv)(B)(*1*), (d)(2)(iv)(B)(*4*), and (d)(3);

■ b. Redesignate paragraphs (d)(2)(iv)(B)(*2*), (d)(2)(iv)(B)(*3*), (d)(2)(iv)(B)(*5*), (d)(2)(iv)(B)(*6*), (d)(2)(iv)(B)(*7*), and (d)(2)(iv)(B)(*8*), as (d)(2)(iv)(B)(*1*), (d)(2)(iv)(B)(*2*), (d)(2)(iv)(B)(*3*), (d)(2)(iv)(B)(*4*), (d)(2)(iv)(B)(*5*), and (d)(2)(iv)(B)(*6*), respectively;

■ c. Revise paragraphs (d)(1)(i), (d)(2)(iv) introductory text, (d)(2)(iv)(A), (d)(2)(iv)(B) introductory text, newly redesignated paragraph (d)(2)(iv)(B)(*4*), and newly redesignated paragraph (d)(2)(iv)(B)(*5*); and

■ d. Add paragraph (d)(1)(iii) to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(d) *Charter vessels in Area 2C and Area 3A*—(1) *General requirements*—(i) *Logbook submission.* For a charter vessel fishing trip during which halibut were caught and retained on or after the first Monday in April and on or before December 31, Alaska Department of Fish and Game (ADF&G) Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the ADF&G and postmarked or received no later than 14 calendar days after the Monday of the fishing week (as defined in 50 CFR 300.61) in which the halibut were caught and retained. Logbook sheets for a charter vessel fishing trip during which halibut were caught and retained on January 1 through the first Sunday in April, must be submitted to the ADF&G and postmarked or received no later than the second Monday in April.

* * * * *

(iii) If halibut were caught and retained in IPHC Regulatory Area 2C and Area 3A during the same charter vessel fishing trip, then a separate Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheet must be completed and submitted for each IPHC regulatory area to record the halibut caught and retained within that IPHC regulatory area. The completed logbook sheets for each IPHC regulatory area must indicate the primary statistical area in which the halibut were caught and retained.

(2) * * *

(iv) *Recordkeeping and reporting requirements in Area 2C.* Each charter vessel angler and charter vessel guide onboard a vessel in Area 2C must comply with the following recordkeeping and reporting requirements (*see* paragraphs (d)(2)(iv)(A) and (B) of this section) by the end of the day or by the end of the charter vessel fishing trip, whichever comes first:

(A) *Charter vessel angler signature requirement.* Each charter vessel angler who retains halibut caught in Area 2C must acknowledge that his or her information and the number of halibut retained (kept) are recorded correctly by signing the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheet on the line number that corresponds to the angler's information.

(B) *Charter vessel guide requirements.* If halibut were caught and retained in Area 2C, the charter vessel guide must record the following information (*see* paragraphs (d)(2)(iv)(B)(*1*) through (*6*) of this section) in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook:

* * * * *

(*4*) *Number of halibut retained.* For each charter vessel angler, record the number of halibut caught and retained.

(*5*) *Signature.* Acknowledge that the recorded information is correct by signing the logbook data sheet.

* * * * *

[FR Doc. 2011–2641 Filed 2–4–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 25
Monday, February 7, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 309

[Docket No. FSIS–2010–0041]

Non-Ambulatory Disabled Veal Calves and Other Non-Ambulatory Disabled Livestock at Slaughter; Petitions for Rulemaking

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Petitions for rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) is requesting comments on two petitions for rulemaking submitted to the Agency that raise issues associated with the disposition of non-ambulatory disabled veal calves and other non-ambulatory disabled livestock at slaughter. The first petition, submitted by the Humane Society of the United States (HSUS), requests that FSIS repeal a provision in its ante-mortem inspection regulations that permits veal calves that are unable to rise from a recumbent position and walk because they are tired or cold to be set apart and held for treatment. Such calves are permitted to proceed to slaughter if they are able to rise and walk after being warmed or rested. The HSUS has petitioned FSIS to amend the regulations to require that non-ambulatory disabled veal calves be condemned and promptly and humanely euthanized. The second petition, submitted by Farm Sanctuary, requests that the Agency amend the Federal meat inspection regulations to prohibit the slaughter of non-ambulatory disabled pigs, sheep, goats, and other amenable livestock. In addition to requesting comments on the petitions, the Agency is clarifying its requirements for condemned non-ambulatory disabled cattle at official slaughter establishments.

DATES: Comments must be received by April 8, 2011.

ADDRESSES: FSIS invites interested persons to submit relevant comments on the implementation of this proposed rule. Comments may be submitted by either of the following methods:

- *Federal eRulemaking Portal:* This Web site provides the ability to type short comments directly into the comment field on this Web page or attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.
- *Mail, including floppy disks or CD–ROMs, and hand- or courier-delivered items:* Send to Docket Clerk, U.S. Department of Agriculture (USDA), FSIS, Room 2–2127, George Washington Carver Center, 5601 Sunnyside Avenue, Beltsville, MD 20705–5272.

Instructions: All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2010–0041. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

Docket: For access to background documents or comments received, go to the FSIS Docket Room at the address listed above between 8 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dr. Daniel Engeljohn, Assistant Administrator, Office of Policy and Program Development, FSIS, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–3700, (202) 720–2709.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Requirements for Non-Ambulatory Disabled Cattle

Non-ambulatory disabled livestock are livestock that cannot rise from a recumbent position or that cannot walk, including, but not limited to, those with broken appendages, severed tendons or ligaments, nerve paralysis, fractured vertebral column, or metabolic condition (9 CFR 309.2(b)). FSIS's ante-mortem inspection regulations require that establishment personnel notify FSIS inspection program personnel when cattle become non-ambulatory disabled after passing ante-mortem inspection (9 CFR 309.3(e)). The regulations require that all non-ambulatory disabled cattle that are offered for slaughter, including those that become non-ambulatory disabled after passing ante-mortem inspection, be condemned and disposed of as provided in 9 CFR 309.13. The FSIS slaughter classes of cattle covered in this Notice include steers and heifers, bulls and cows (dairy and beef), and calves and heavy calves (that weigh more than 400 pounds). 9 CFR 309.13 prescribes requirements for the disposition of condemned livestock at official establishments.

Except as otherwise provided for in the regulations, condemned livestock, including non-ambulatory disabled cattle, must be humanely euthanized by the establishment and the carcasses disposed of as provided in 9 CFR part 314, the regulations that prescribe requirements for the handling and disposition of condemned or other inedible products at official establishments (9 CFR 309.13(a)). Some livestock condemned at ante-mortem inspection due to certain reversible conditions, including veal calves that are non-ambulatory disabled because they are tired or cold, are permitted to be set apart and held for treatment under FSIS supervision (9 CFR 309.13(b)). The FSIS slaughter classes of veal calves are bob veal, formula-fed veal, and non-formula-fed veal. Livestock that are set apart for treatment are permitted to proceed to slaughter if, after receiving treatment, the animal is found to be free from disease. Thus, non-ambulatory disabled veal calves that are able to rise from a recumbent position and walk after they have been set aside and warmed or rested, and that are found to be otherwise free from disease, may be slaughtered for human food.

When FSIS first issued regulations to prohibit the slaughter of non-ambulatory disabled cattle, it allowed inspection program personnel to determine, on a case-by-case basis, the disposition of cattle that became non-ambulatory disabled after passing ante-mortem inspection. Under this practice, if an FSIS Public Health Veterinarian (PHV) could verify that an animal became non-ambulatory after ante-mortem inspection solely because it suffered an acute injury, such as a broken appendage or a severed tendon or ligament, it could be tagged as "U.S. Suspect" and was eligible to proceed to

slaughter. Otherwise, the animal was condemned.

In 2007, FSIS codified this practice as part of a final rule to affirm, with changes, interim measures that it had implemented in 2004 to prevent potential human exposure to the Bovine Spongiform Encephalopathy (BSE)agent ("Prohibition of the Use of Specified Risk Materials for Human Food and Requirements for the Disposition of Non-Ambulatory Disabled Cattle; Prohibition of the Use of Certain Stunning Devices Used To Immobilize Cattle During Slaughter" (72 FR 38700)). The Agency had prohibited the slaughter of non-ambulatory disabled cattle for human food because cattle that cannot rise from a recumbent position are among the cattle that have a greater prevalence of BSE than healthy slaughter cattle and the typical clinical signs of BSE may not always be observed when cattle are non-ambulatory.

In 2008, an investigation into alleged inhumane handling of non-ambulatory disabled cattle at an official slaughter establishment indicated that the case-by-case disposition determination for cattle that became non-ambulatory disabled after passing ante-mortem inspection may not always ensure the proper disposition of these animals and may have created an incentive for establishments to inhumanely force non-ambulatory disabled cattle to rise. Therefore, in March 2009, FSIS issued a final rule that amended 9 CFR 309.3(e) to remove the provision that allowed FSIS PHVs to determine the disposition of cattle that became non-ambulatory disabled after they had passed ante-mortem inspection. In that rulemaking, FSIS made clear that "* * * humane handling requires that such cattle be promptly euthanized" ("Requirements for the Disposition of Cattle that Become Non-Ambulatory Disabled Following Ante-Mortem Inspection" (74 FR 11464)). In that rulemaking the Agency also noted that the amendment prohibiting the slaughter of non-ambulatory disabled cattle did not affect the provision that permits veal calves that are tired or cold to be set aside and treated (74 FR 11465).

Regulatory Requirements for Non-Ambulatory Disabled Livestock Other Than Cattle

FSIS's ante-mortem inspection regulations do not require that non-ambulatory disabled livestock other than cattle be condemned. Instead, animals that are suspected of being affected with a disease or condition that may require condemnation of the animal, in whole or in part, identified as "U.S. Suspect" (9 CFR 309.2(b)). Such animals are examined at ante-mortem inspection by an FSIS veterinarian, and a record of the veterinarian's clinical findings accompanies the carcass to post-mortem inspection if the animal is not condemned on ante-mortem inspection. Post-mortem inspections of the carcasses of "U.S. Suspects" livestock are performed by FSIS veterinarians rather than by food inspectors, and the results of this inspection are recorded. "U.S. Suspect" animals, unless otherwise released pursuant to 9 CFR 309.2(p), must be set apart and slaughtered separately (9 CFR 309.2(n)). If, on post-mortem inspection, the meat and meat food products from such animals are found to be not adulterated, such products may be used for human food (9 CFR 311.1).

During the 2007 rulemaking to require the condemnation of non-ambulatory disabled cattle and the 2009 rulemaking to remove the case-by-case disposition determination of cattle that became non-ambulatory after passing ante-mortem inspection, the Agency received numerous comments from animal welfare organizations and the citizens concerned about the private welfare of animals.[1] The majority of these commenters encouraged FSIS to extend the ban on slaughter of non-ambulatory disabled cattle to other livestock species to ensure that these animals are handled in a humane manner (72 FR 38722 and 74 FR 11464).

In response to the comments, FSIS noted that the purpose of the 2007 rulemaking was to affirm measures that the Agency had implemented to prevent potential human exposure to the BSE agent. In response to comments submitted on the 2009 rulemaking, the Agency noted that the 2009 rulemaking only addressed ante-mortem inspection and humane handling issues related to non-ambulatory disabled cattle. Thus, issues associated with humane handling of non-ambulatory disabled livestock other than cattle were outside the scope of these rulemakings. However, in both rulemakings, FSIS stated that it planned to evaluate measures that may be necessary to ensure the humane handling of other non-ambulatory disabled livestock species (72 FR 38722 and 74 FR 11464).

HSUS Petition

In November 2009, the HSUS submitted a petition requesting that FSIS amend the ante-mortem inspection regulations to remove the provision that allows veal calves that are non-ambulatory disabled because they are tired or cold to be set aside to be warmed or rested (hereinafter referred to as "the veal calf set-aside provision") (9 CFR 309.13(b)). The petition requests that FSIS amend the regulations to remove the veal calf set-aside provision and require that all non-ambulatory disabled veal calves be immediately and humanely euthanized. The petition is available for viewing by the public in the FSIS docket room and on the FSIS Web site at *http://www.fsis.usda.gov/regulations_&_policies/Petitions/index.asp.*

To support the requested action, the petition references video footage from an HSUS undercover investigation at an official veal slaughter establishment in August 2009. The video footage documents incidents in which a veal slaughter establishment owner and his employees repeatedly use electric prods and physical force to attempt to get non-ambulatory disabled bob veal calves to rise.

The petition asserts that the veal calf set-aside provision is inconsistent with the language and intent of the Humane Methods of Slaughter Act because it fails to ensure that the "* * * handling of livestock in connection with slaughter * * * be carried out only by humane methods" (7 U.S.C. 1902). The petition states that allowing non-ambulatory disabled veal calves to be set-aside for treatment is inherently inhumane because it encourages conduct such as dragging, kicking, excessive shocking, and other means of forced movement that are clearly prohibited by the HMSA and FSIS's implementing regulations in 9 CFR part 313.

According to the petition, failing to require immediate euthanasia creates a financial incentive for establishments to engage in abusive conduct because a non-ambulatory disabled calf is worthless unless it is slaughtered. The petition states that the veal calf set-aside provision is also a means by which non-ambulatory veal calves may be left to linger indefinitely and then eventually forced to rise so that they can proceed to slaughter.

In addition to being inconsistent with the HSMA, the petition argues that allowing non-ambulatory disabled veal calves to be set aside and treated is inconsistent with FSIS's own rules, policies, and conclusions with respect to other classes of non-ambulatory disabled cattle. The petition notes that FSIS amended 9 CFR 309.3(e) to remove the case-by-case disposition determination of cattle that became non-ambulatory disabled after ante-mortem

[1] The Agency received 23,000 comments to the 2007 rulemaking and 58,000 comments to the 2009 rulemaking.

inspection "* * * to ensure that animals that may be unfit for human food do not proceed to slaughter and to improve the effectiveness and efficiency of the inspection system" (74 FR 11463). The petition states that the same reasoning applies to non-ambulatory disabled veal calves. The petition asserts that removing the veal calf set-aside provision from 9 CFR 309.13(b) would eliminate uncertainty in determining whether veal calves are non-ambulatory disabled because they are tired or cold or because they are injured or sick, thereby ensuring the appropriate disposition of these animals. The petition also maintains that removing the veal calf set-aside provision would improve inspection efficiency by eliminating the time that FSIS inspection program personnel spend assessing and supervising the treatment of non-ambulatory disabled veal calves.

The petition further argues that, just as removing the case-by-case disposition of non-ambulatory disabled cattle (other than veal) was needed to ensure that slaughter establishments handled these animals humanely, requiring the immediate euthanasia of non-ambulatory disabled veal calves will remove the incentive for slaughter establishments to inhumanely force these animals to rise so that they can proceed to slaughter. The petitioner also maintains that the practices used in the raising of veal calves, which, according to the petitioner, include inadequate transfer of antibodies from the mother's colostrum, iron deficient diets, intensive confinement, and lack of activity, result in calves that are acutely susceptible to conditions and injuries that increase the likelihood of them going down, either before or upon arrival at the slaughter facility. The petitioner asserts that removing the veal calf set-aside provision will eliminate incentive for veal calf producers to send extremely weak calves to slaughter, thereby improving the raising conditions for these animals.

Agency Review and Request for Comment on the HSUS Petition

FSIS has carefully reviewed and considered the issues raised in the HSUS petition. The Agency is responsible for enforcing the HMSA and believes strongly in the importance of ensuring that animals are humanely handled in connection with slaughter. The Agency is concerned that the veal calves set-aside provision may create an incentive for establishments to inhumanely force non-ambulatory disabled veal calves to rise and for veal calf producers to send weakened calves to slaughter.

The Agency also believes that prohibiting the slaughter of all non-ambulatory disabled veal calves may remove potential uncertainty in determining the disposition of calves that have been set aside and would be consistent with the requirements for the other classes of non-ambulatory disabled cattle.

Therefore, the Agency has tentatively decided to grant the HSUS petition. Amending the Federal meat ante-mortem inspection regulations to prohibit the slaughter of non-ambulatory disabled veal calves would better ensure effective implementation of ante-mortem inspection pursuant to 21 U.S.C. 603(a) and of humane handling requirements established pursuant to 21 U.S.C. 603(b) of the Federal Meat Inspection Act (FMIA). FSIS has the authority under 21 U.S.C. 621 to adopt regulations for the efficient administration of the FMIA.

According to the 2009 data from FSIS's Animal Disposition Reporting System (ADRS), about 157 U.S. federally-inspected establishments slaughtered about 521,000 calves for veal and veal products. All of the 157 establishments were small entities, based on the criteria of the Small Business Administration (SBA).[2]

Although FSIS is inclined to grant HSUS's petition, before initiating rulemaking, the Agency has determined that it would be useful to solicit public input on the issues raised in the petition. Therefore, the Agency is issuing this notice to requests comments on the HSUS petition and the potential impact of granting the petition.

Farm Sanctuary Petition

In March 2010, Farm Sanctuary submitted a petition requesting that FSIS amend the ante-mortem inspection regulations to require that non-ambulatory disabled pigs, sheep, goats, and other amenable livestock species be condemned. The petition states that such action is needed to ensure that all livestock are humanely handled in connection with slaughter as required under the HMSA. The petition is available for viewing by the public in the FSIS docket room and on the FSIS Website at *http://www.fsis.usda.gov/PDF/Petition_Humane_Handling.pdf.*

To support the requested action, the petition references a number of FSIS Non-Compliance Records (NRs) that Farm Sanctuary obtained through Freedom of Information Act (FOIA) requests. The NRs cited in the petition primarily documented incidents involving the inhumane handling of pigs. The NRs documented establishment personnel kicking, prodding, dragging, and otherwise trying to force non-ambulatory disabled pigs to move to slaughter. The NRs also documented incidents in which establishment personnel allowed ambulatory pigs to trample over "downed" pigs in the alleyway. The petition also references an NR in which non-ambulatory disabled sheep were denied access to food and water.

The petition asserts that because FSIS continues to allow non-ambulatory disabled livestock other than cattle to be slaughtered for human food, establishments have a financial incentive to force these animals through the slaughtering process, which encourages inhumane treatment. The petition also asserts that prohibiting the slaughter of all non-ambulatory disabled livestock will encourage livestock producers and transporters to improve their handling practices. The petition further notes that such action is needed to prevent diseased animals from entering the human food supply.

Agency Review and Request for Comment on the Farm Sanctuary Petition

The Agency has reviewed the Farm Sanctuary petition requesting that it amend the ante-mortem inspection regulations to prohibit the slaughter of all non-ambulatory disabled livestock and to require such animals be humanely euthanized. However, the Agency has not yet determined how it intends to respond to the requested action. Therefore, to help inform its response, FSIS is soliciting comments on the issues raised in the petition.

As noted earlier in this document, as part of its 2007 rulemaking to affirm measures that the Agency had implemented to prevent potential human exposure to the BSE agent, and as part of its 2009 rulemaking to require the condemnation of all non-ambulatory disabled cattle, FSIS received numerous comments requesting that it prohibit the slaughter of all non-ambulatory disabled livestock, including livestock other than cattle. However, the Agency did not fully evaluate the issues raised in those comments because issues related to the humane handling of livestock other than cattle were outside the scope of the 2007 and 2009 proceedings.

In response to the Farm Sanctuary petition, FSIS is now considering measures that may be necessary to ensure that non-ambulatory disabled

[2] The Small Business Administration defines small businesses as those with less than 500 Full Time Equivalent (FTE) employees.

livestock other than cattle are humanely handled in connection with slaughter. Therefore, the Agency is soliciting comments on Farm Sanctuary's petition and the petition's request that all non-ambulatory disabled livestock at official establishments be condemned and promptly euthanized. After carefully considering the comments, FSIS intends to issue another **Federal Register** notice or proposed rulemaking related to addressing issues associated with the humane handling of livestock other than cattle at official establishments.

Clarification of the Requirements for Disposition of Cattle That Become Non-Ambulatory Disabled

As mentioned above, the 2009 final rule amended FSIS' ante-mortem inspection regulations to prohibit the slaughter of all non-ambulatory disabled cattle, including those that become non-ambulatory disabled after passing ante-mortem inspection. The amendment, 9 CFR 309.3(e), states that, "Establishment personnel must notify FSIS inspection personnel when cattle become non-ambulatory disabled after passing ante-mortem inspection. Non-ambulatory disabled cattle that are offered for slaughter must be condemned and disposed of in accordance with § 309.13."

As stated in the preamble to that final rule, FSIS amended its regulations to require that *all* (emphasis added) cattle that are non-ambulatory disabled at an official establishment, including those that become non-ambulatory disabled after passing ante-mortem inspection, be condemned and disposed of properly. The Agency also stated that it was not necessary to amend the regulations to require that non-ambulatory disabled cattle be humanely euthanized "* * * because humane handling requires that such cattle be promptly euthanized" (74 FR 11464). FSIS stated that the amendments would ensure more effective and efficient inspection procedures and improved compliance with the humane handling requirements (74 FR 11463).

When reviewing the petitions submitted by HSUS and Farm Sanctuary, FSIS found that certain statements in the Agency's directive on ante-mortem inspection (Directive 6100.1, Revision 1, Ante-Mortem Livestock Inspection (issued 4/16/09)) and in other Agency guidance may be inconsistent with the 2009 final rule. Therefore, the Agency recently issued an FSIS notice to make clear to its inspection program personnel that all ante-mortem condemned non-ambulatory disabled cattle, and cattle that become non-ambulatory disabled after passing ante-mortem inspection, must be promptly and humanely euthanized to ensure that they are humanely handled.

As noted above, non-ambulatory disabled cattle are cattle that cannot rise from a recumbent position or walk, regardless of the reason for their non-ambulatory status. This includes cattle that are unable to rise due to a reversible condition, such as parturient paresis, ketosis, pneumonia, arthritis, injury and the other conditions identified in 9 CFR 309.13(b). Thus, non-ambulatory disabled cattle, other than those in the veal calf slaughter classes, cannot be set apart for any reason and held for treatment under supervision of FSIS inspection program personnel.

The Agency will revise Directive 6100.1, Revision 1, and other guidance to ensure that they more clearly reflect the regulatory requirement that all non-ambulatory disabled cattle are condemned and must be promptly and humanely euthanized.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202–720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250–9410 or call 202–720–5964 (voice and TTY).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov/regulations_&_policies/Federal_Register_Notices/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the *FSIS Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/News_&_Events/Email_Subscription/.* Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

Done at Washington, DC, on February 1, 2011.

Alfred Almanza,

Administrator.

[FR Doc. 2011–2504 Filed 2–4–11; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0673; Directorate Identifier 2009–NM–208–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This proposed 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:

In June 2000, prompted by a crack found at the top of the Nose Landing Gear (NLG) oleo, BAE Systems (Operations) Ltd (BAE

Systems) issued Inspection Service Bulletin (ISB) ISB.32–158. * * *

Later, as part of an accident investigation, the examination of a fractured NLG main fitting showed that M–D (Messier-Dowty) SB.146–32–150 was not accomplished * * * BAE Systems determined that more NLG units could be similarly affected. * * *

Subsequently, investigation and analysis by M–D identified the need for a reduction of the inspection threshold and the repetitive inspection interval for the affected NLG units. * * *

* * * * *

* * * [I]nvestigation by M–D showed that if any undetected crack was present at the time of the embodiment of M–D SB 146–32–150, Part B or Part C, it could continue to grow while the NLG is in service and could lead to the failure of the main fitting and possible collapse of the NLG. * * * [B]AE Systems have received additional reports of cracked NLG main fittings. One operator reported a crack in a premodification main fitting. * * *

* * * * *

Undetected cracks could lead to failure of the NLG Main Fitting and collapse of the NLG.

* * * * *

The unsafe condition is cracking of the NLG, which could adversely affect the airplane's safe landing. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by March 24, 2011.

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.

For service information identified in this proposed AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; e-mail *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.* You may review copies of the referenced 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.

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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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:

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–2010–0673; Directorate Identifier 2009–NM–208–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 we receive about this proposed AD.

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on July 7, 2010 (75 FR 38953). That earlier NPRM proposed to supersede AD 2002–03–10, Amendment 39–12651 (67 FR 6855, February 14, 2002), to require actions intended to address the unsafe condition for the products listed above.

Since that NPRM was issued, we have determined that the actions specified in the earlier NPRM apply to all airplanes; therefore, we have removed from this supplemental NPRM the inspection to determine whether an affected nose landing gear (NLG) unit is installed. Also, we have determined that the compliance time for the special detailed inspection for cracking needs to be reduced. We have also determined that replacing the NLG is not a terminating action for the repetitive inspections.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0202R1, dated October 14, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

In June 2000, prompted by a crack found at the top of the Nose Landing Gear (NLG) oleo, BAE Systems (Operations) Ltd (BAE Systems) issued Inspection Service Bulletin (ISB) ISB.32–158. This ISB was classified mandatory by the United Kingdom Civil Aviation Authority under AD number 002–06–2000, requiring repetitive Non-Destructive Testing (NDT) crack inspections on the upper end of the NLG oleo. The AD also provided an optional terminating action for the repetitive inspections, by embodiment of Messier-Dowty (M–D) Service Bulletin (SB) SB.146–32–150.

Later, as part of an accident investigation, the examination of a fractured NLG main fitting showed that M–D SB.146–32–150 was not accomplished, although the records indicated that it had been. BAE Systems determined that more NLG units could be similarly affected. These NLG units were overhauled at Messier Services in Sterling, Virginia, in the United States. To address this situation, EASA issued Emergency AD 2009–0043–E to require repetitive NDT inspections of each affected NLG unit and, if cracks are found, replacement with a serviceable unit, in accordance with the instructions of BAE Systems Alert ISB.A32–180 and M–D SB.146–32–149.

Subsequently, investigation and analysis by M–D identified the need for a reduction of the inspection threshold and the repetitive inspection interval for the affected NLG units and replaced M–D SB 146–32–149 with M–D SB.146–32–174. Consequently, BAE Systems SB 32–158 was withdrawn and superseded by BAE Systems Alert ISB.A32–180 Revision 1, which was mandated by EASA Emergency AD 2009–0197–E.

As further information became available, BAE Systems saw a need to clarify the compliance instructions in the ISB and issued Revision 2 of Alert Service Bulletin ISB.A32–180. The layout of Revision 2 was no longer compatible with the instructions of EASA Emergency AD 2009–0197–E, so EASA issued AD 2010–0001–E which superseded EASA AD 2009–0197–E and which reduced the threshold and interval of the repetitive NDT inspections and required repetitive NDT inspections of each affected NLG unit and, if cracks were found, the replacement of the NLG with a serviceable unit.

The optional closing action of EASA AD 2010–0001–E is embodiment of M–D B 146–32–150 (polishing and shot peening of the NLG main fitting) or confirmation that it has

already been accomplished, as applicable. Further investigation by M–D showed that if any undetected crack was present at the time of the embodiment of M–D SB 146–32–150, Part B or Part C, it could continue to grow while the NLG is in service and could lead to the failure of the main fitting and possible collapse of the NLG. For this reason, EASA issued AD 2010–0072 (and its revision 1) which required the introduction of repetitive NDT inspections (defined in BAE Systems ISB 32–181) on NLG main fittings following embodiment of M–D SB 146–32–150. Despite the aforementioned measures, BAE Systems have received additional reports of cracked NLG main fittings. One operator reported a crack in a pre-modification main fitting. Shot peening was not present, as this was a pre-modification gear, but the surface finish was better than that required for a post-modification fitting. This implies that the surface finish achieved by the modification may not be effective in preventing cracking. In addition, a positive inspection return from BAE Systems ISB 32–181 also questions whether the combination of improved surface finish and shot peening are effective, as a crack may have initiated from a surface which is compliant with the modification standard.

It has been concluded that the polishing and the shot peening of the NLG main fitting embodied through M–D SB 146–32–150 are potentially ineffective in preventing cracks and that all NLG main fittings should be subject to the same 300 Flight Cycles (FC) repetitive inspection to ensure pre-critical crack detection.

Undetected cracks could lead to failure of the NLG Main Fitting and collapse of the NLG.

With that view, BAE Systems issued ISB.32–182 to implement this repetitive 300 FC inspection on all NLG main fittings regardless of their modification standard. ISB.32–182 supersedes existing ISBs A32–180 and 32–181, initially with no closing action.

For the reasons described above, this AD supersedes EASA Emergency AD 2010–0001–E and EASA AD 2010–0072 Revision 1 and requires repetitive NDT inspections of all NLG main fittings and, if cracks are found, replacement of the NLG with a serviceable unit.

This AD is revised to require corrective actions on the NLG main fittings and not on the whole NLGs. NLGs and NLG main fittings may have accumulated different flight cycle amounts.

The unsafe condition is cracking of the NLG, which could adversely affect the airplane's safe landing. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Messier-Dowty has issued Service Bulletin 146–32–174, Revision 2, including Appendix A, dated August 16, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

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.

FAA's Determination and Requirements of This Proposed 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 proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed 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 proposed 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 proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect 1 product of U.S. registry.

There are no retained actions in this supplemental NPRM that are required by AD 2002–03–10.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $85.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–12651 (67 FR 6855, February 14, 2002) and adding the following new AD:

BAE Systems (Operations) Limited: Docket No. FAA–2010–0673; Directorate Identifier 2009–NM–208–AD.

Comments Due Date

(a) We must receive comments by March 24, 2011.

Affected ADs

(b) The AD supersedes AD 2002–03–10, Amendment 39–12651.

Applicability

(c) This AD applies to BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A 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 32: Landing Gear.

Reason

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

In June 2000, prompted by a crack found at the top of the Nose Landing Gear (NLG) oleo, BAE Systems (Operations) Ltd (BAE Systems) issued Inspection Service Bulletin (ISB) ISB.32–158. * * *

Later, as part of an accident investigation, the examination of a fractured NLG main fitting showed that M–D (Messier-Dowty) SB.146–32–150 was not accomplished * * * BAE Systems determined that more NLG units could be similarly affected. * * *

Subsequently, investigation and analysis by M–D identified the need for a reduction of the inspection threshold and the repetitive inspection interval for the affected NLG units. * * *

* * * * *

* * * [I]nvestigation by M–D showed that if any undetected crack was present at the time of the embodiment of M–D SB 146–32–150, Part B or Part C, it could continue to grow while the NLG is in service and could lead to the failure of the main fitting and possible collapse of the NLG. * * * [B]AE Systems have received additional reports of cracked NLG main fittings. One operator reported a crack in a premodification main fitting. * * *

* * * * *

Undetected cracks could lead to failure of the NLG Main Fitting and collapse of the NLG.

* * * * *

The unsafe condition is cracking of the NLG, which could adversely affect the airplane's safe landing.

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) Before the accumulation of 5,000 total flight cycles on the NLG main fitting, or within 300 flight cycles after the effective date of this AD, whichever occurs later, do an ultrasonic inspection on the upper part of the NLG main fitting for any crack, in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin 146–32–174, Revision 2, including Appendix A, dated August 16, 2010. Thereafter, repeat the inspection at intervals not to exceed 300 flight cycles.

(h) An inspection that has been done in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin 146–32–174, Revision 1, dated September 2, 2009, or in accordance with the Accomplishment Instructions of Messier-Dowty Service Bulletin 146–32–175, Revision 2, dated March 5, 2010, before the effective date of this AD but not more than 300 flight cycles before the effective date of this AD, is considered acceptable for compliance with the initial inspection required by paragraph (g) of this AD.

Replacement

(i) If any crack is found from the inspections required by paragraph (g) of this AD, before further flight, replace the NLG main fitting with a serviceable NLG main fitting, using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Note 1: Guidance on replacing the NLG main fitting with a serviceable NLG main fitting can be found in Subsection 32–20–11 of BAE Systems (Operations) Limited BAe 146 Series/Avro 146–RJ Series Aircraft Maintenance Manual 146.153, Revision 101, dated July 15, 2010.

(j) Replacing the NLG main fitting with a serviceable NLG main fitting is not a terminating action for the repetitive inspections required by paragraph (g) of this AD.

Parts Installation

(k) As of the effective date of this AD, no person may install an affected NLG main fitting on any airplane, unless that NLG main fitting has been inspected in accordance with paragraph (g) of this AD and no cracking is found.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(l) 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, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding 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.

Related Information

(m) Refer to MCAI EASA Airworthiness Directive 2010–0202R1, dated October 14, 2010; Messier-Dowty Service Bulletin 146–32–174, Revision 2, including Appendix A, dated August 16, 2010; for related information.

Issued in Renton, Washington, on January 28, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2610 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1212; Directorate Identifier 2008–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * * *

The airworthiness limitations applicable to the Certification Maintenance Requirements

(CMR) are given in Airbus A330 ALS Part 3, which is approved by the European Aviation Safety Agency (EASA).

The revision 03 of Airbus A330 ALS Part 3 introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with this revision constitutes an unsafe condition.

* * * * *

The unsafe condition is safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by March 4, 2011.

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.

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

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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–1212; Directorate Identifier 2008–NM–167–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 we receive about this proposed AD.

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model A330–200 and –300 series airplanes. That supplemental NPRM was published in the **Federal Register** on August 4, 2010 (75 FR 46861). The original NPRM (75 FR 4710, January 29, 2010) proposed to require actions intended to address the unsafe condition for the products listed above. The supplemental NPRM introduced new or more restrictive maintenance requirements and/or airworthiness limitations as specified in Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 02, dated December 16, 2009.

Since that supplemental NPRM was issued, we have received Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010, which contains new and more restrictive requirements. We referred to Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 02, dated December 16, 2009, as the appropriate source of service information in the original NPRM. We have revised this second supplemental NPRM to refer to Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010. The European Aviation Safety Agency (EASA) has issued EASA AD 2010–0264, dated December 20, 2010. You may obtain further information by examining the MCAI in the AD docket.

Comments

We have considered the following comment received on the first supplemental NPRM.

Request To Revise Paragraphs (f) and (g) of the First Supplemental NPRM

Airbus requested that we revise paragraphs (f) and (g) of the first supplemental NPRM. Airbus stated that Section 25.1529 of the Federal Aviation Regulations (14 CFR 25.1529) and Appendix H of 14 CFR part 25 require the airplane type certificate holder—not the operator—to produce and update the Instructions for Continued Airworthiness (ICA). Airbus stated that the type certificate holder must make the ICAs available to all operators and owners, who are then responsible to incorporate the latest applicable contents of revisions of the Airworthiness Limitations section (ALS) or any other part of the ICA into the approved maintenance program. Airbus stated that operators and owners demonstrate compliance with Section 121.367 of the Federal Aviation Regulations (14 CFR 121.367) and Section 121.369 of the Federal Aviation Regulations (14 CFR 121.369) by following this procedure.

We agree that the ALI requirement could be stated more clearly so that it does not directly require operators to revise the ALS of the ICA. It is more appropriate to require revising the operators' maintenance programs. However, we have not revised paragraph (f) of this second supplemental NPRM because it is a restatement of the existing AD. We have revised paragraph (g) of this second supplemental NPRM to clarify that that the operators and owners are required to incorporate the latest applicable contents of revisions of the ALS into the maintenance program.

Change to Applicability

We have also added Airbus Model A330–223F and A330–243F airplanes to the applicability of this supplemental NPRM. There are no Model A330–223F and A330–243F airplanes on the U.S. registry.

FAA's Determination and Requirements of This Proposed 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 proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed 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 proposed 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 proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 55 products of U.S. registry.

The actions that are required by AD 2007–05–08 and retained in this proposed AD take about 1 work-hour per product, at an average labor rate of $85 per work hour. Based on these figures, the estimated cost of the currently required actions is $85 per product.

We estimate that it would take about 1 work-hour per product to comply with the new basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $4,675, or $85 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–14969 (72 FR 9658, March 5, 2007) and adding the following new AD:

Airbus: Docket No. FAA–2009–1212; Directorate Identifier 2008–NM–167–AD.

Comments Due Date

(a) We must receive comments by March 4, 2011.

Affected ADs

(b) This AD supersedes AD 2007–05–08, Amendment 39–14969.

Applicability

(c) This AD applies to all Airbus Model A330–201, –202, –203, –223, –223F, –243, –243F, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, certificated in any category; all serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 05.

Reason

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

* * * * *

The airworthiness limitations applicable to the Certification Maintenance Requirements (CMR) are given in Airbus A330 ALS Part 3, which is approved by the European Aviation Safety Agency (EASA).

The revision 03 of Airbus A330 ALS Part 3 introduces more restrictive maintenance requirements and/or airworthiness limitations. Failure to comply with this revision constitutes an unsafe condition.

* * * * *

The unsafe condition is safety-significant latent failures that would, in combination with one or more other specific failures or events, result in a hazardous or catastrophic failure condition.

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 (k) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1A.

Restatement of Requirements of AD 2007–05–08, With Requirements for Model A340 Airplanes Removed

Revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness

(f) Unless already done: Within 90 days after April 9, 2007 (the effective date of AD 2007–05–08), revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness by incorporating Airbus A330 Certification Maintenance Requirements, Document 955.2074/93, Issue 19, dated March 22, 2006. Accomplish the actions specified in the applicable CMR at the times specified in the applicable CMR and in accordance with the applicable CMR, except as provided by paragraphs (f)(1) and (f)(2) of this AD.

(1) The associated interval for any new task is to be counted from April 9, 2007.

(2) The associated interval for any revised task is to be counted from the previous performance of the task.

New Requirements of This AD

Revise the Maintenance Program

(g) Unless already done, within 90 days of the effective date of this AD: Revise the maintenance program which ensures the continuing airworthiness of each operated airplane by incorporating Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010. At the times specified in the Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010, comply with all applicable maintenance requirements and associated airworthiness limitations included in Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010, except as provided by paragraphs (h) and (i) of this AD. Doing this revision terminates the requirements of paragraph (f) of this AD for that airplane only.

Exceptions to the CMR Tasks

(h) At the latest of the times specified in paragraph (h)(1), (h)(2), or (h)(3) of this AD: Do the first accomplishment of CMR Task 213100–00001–2–C of Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010.

(1) Before the accumulation of 48,000 total flight hours.

(2) Within 48,000 flight hours after the most recent accomplishment of Maintenance Review Board Report (MRBR) Task 21.31.00/05.

(3) Within three months after the effective date of this AD.

(i) At the latest of the times specified in paragraph (i)(1), (i)(2), or (i)(3) of this AD: Do the first accomplishment of CMR Tasks 242000–00005–1–C, 243000–00001–1–C, and 243000–00002–1–C of Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010.

(1) Before the accumulation of 12,000 total flight hours.

(2) Within 12,000 flight hours after the most recent accomplishment of MRBR Task 24.20.00/17, 24.30.00/04, or 24.30.00/05 respectively.

(3) Within three months after the effective date of this AD.

No Alternative Inspections or Intervals

(j) After accomplishing the action required by paragraph (g) of this AD, no alternative inspections or inspection intervals may be used, unless the inspections or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM–116, International Branch, 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. 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.

Related Information

(l) Refer to EASA Airworthiness Directives 2006–0225, dated July 21, 2006, and 2010–0264, dated December 20, 2010; Airbus A330 Certification Maintenance Requirements, Document 955.2074/93, Issue 19, dated March 22, 2006; and Airbus A330 ALS, Part 3—Certification Maintenance Requirements, Revision 03, dated July 29, 2010; for related information.

Issued in Renton, Washington, on January 28, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2611 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0037; Directorate Identifier 2010–NM–273–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes)

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) 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:

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88).

In their letters referenced 04/00/02/07/01–L296, dated March 4th, 2002, and 04/00/02/07/03–L024, dated February 3rd, 2003, the JAA [Joint Aviation Authorities] recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aircraft * * * are required to conduct a design review against explosion risks.

During improvement of the protection of fuel pump wiring against short-circuit by accomplishment of Airbus Service Bulletin (SB) A300–24–6094, a study led by the manufacturer concluded that the harness, installed through the wing panel needed to be protected to prevent possible damage in case of chafing which could potentially lead to short-circuit [and intermittent function or loss of the inner tank fuel pump. Loss of both inner tank fuel pumps could result in inability to use the remaining fuel supply in the inner tank. A short-circuit could also result in an ignition source in a flammable leakage zone].

* * * * *

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by March 24, 2011.

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.

For service information identified in this proposed AD, contact Airbus SAS—EAW (Airworthiness Office), 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.* You

may review copies of the referenced 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.

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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

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–2011–0037; Directorate Identifier 2010–NM–273–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 we receive about this proposed AD.

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 2010–0225, dated November 5, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

> [T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88).
>
> In their letters referenced 04/00/02/07/01–L296, dated March 4th, 2002, and 04/00/02/07/03–L024, dated February 3rd, 2003, the JAA [Joint Aviation Authorities] recommended the application of a similar regulation to the National Aviation Authorities (NAA).
>
> Under this regulation, all holders of type certificates for passenger transport aircraft with either a passenger capacity of 30 or more, or a payload capacity of 3,402 kg (7,500 lb) or more, which have received their certification since January 1st, 1958, are required to conduct a design review against explosion risks.
>
> During improvement of the protection of fuel pump wiring against short-circuit by accomplishment of Airbus Service Bulletin (SB) A300–24–6094, a study led by the manufacturer concluded that the harness, installed through the wing panel needed to be protected to prevent possible damage in case of chafing which could potentially lead to short-circuit [and intermittent function or loss of the inner tank fuel pump. Loss of both inner tank fuel pumps could result in inability to use the remaining fuel supply in the inner tank. A short-circuit could also result in an ignition source in a flammable leakage zone].
>
> For the reasons stated above, this [EASA] AD requires the replacement of bushes in the hydraulic reservoir panel.

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

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A300–24–6102, Revision 01, dated September 24, 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 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 proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

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 proposed 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 proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 120 products of U.S. registry. We also estimate that it would take about 13 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $266 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 costs. 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 the proposed AD on U.S. operators to be $164,520, or $1,371 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 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:

Airbus: Docket No. FAA–2011–0037; Directorate Identifier 2010–NM–273–AD.

Comments Due Date

(a) We must receive comments by March 24, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes, certificated in any category, all certified models, all serial numbers, except airplanes on which Airbus Service Bulletin A300–24–6102 (Airbus Modification 13381) has been embodied.

Subject

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

Reason

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

[T]he FAA has published SFAR 88 (Special Federal Aviation Regulation 88).

In their letters referenced 04/00/02/07/01–L296, dated March 4th, 2002, and 04/00/02/07/03–L024, dated February 3rd, 2003, the JAA [Joint Aviation Authorities] recommended the application of a similar regulation to the National Aviation Authorities (NAA).

Under this regulation, all holders of type certificates for passenger transport aircraft * * * are required to conduct a design review against explosion risks.

During improvement of the protection of fuel pump wiring against short-circuit by accomplishment of Airbus Service Bulletin (SB) A300–24–6094, a study led by the manufacturer concluded that the harness, installed through the wing panel needed to be protected to prevent possible damage in case of chafing which could potentially lead to short-circuit [and intermittent function or loss of the inner tank fuel pump. Loss of both inner tank fuel pumps could result in inability to use the remaining fuel supply in the inner tank. A short-circuit could also result in an ignition source in a flammable leakage zone].

* * * * *

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 30 months after the effective date of this AD, install Teflon bushes in the hydraulic reservoir panel at the lower left-hand side in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A300–24–6102, Revision 01, dated September 24, 2010.

Credit for Actions Accomplished in Accordance With Previous Service Information

(h) Actions done before the effective date of this AD in accordance with Airbus Mandatory Service Bulletin A300–24–6102, dated August 13, 2009, are acceptable for compliance with the corresponding requirements of this AD.

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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton,

Washington 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be e-mailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding 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.

Related Information

(j) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0225, dated November 5, 2010; and Airbus Mandatory Service Bulletin A300–24–6102, Revision 01, dated September 24, 2010; for related information.

Issued in Renton, Washington, on January 31, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2612 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0036; Directorate Identifier 2010–NM–230–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Model DHC–8–400 Series Airplanes

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) 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 aeroplanes fuel system against fuel tank safety standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043 [which corresponds with the FAA's Special Federal Aviation Regulation (SFAR) 88]. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that a number of modifications to the fuel system are required to mitigate unsafe conditions that could result in potential ignition source within the fuel system.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by March 24, 2011.

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.

For service information identified in this proposed AD, contact Bombardier, Inc., Q–Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced 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.

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 in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Propulsion and Services Branch, ANE–173, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7321; fax (516) 794–5531.

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–2011–0036; Directorate Identifier 2010–NM–230–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 we receive about this proposed AD.

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2010–31, dated September 3, 2010 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

Bombardier Aerospace has completed a system safety review of the aeroplanes fuel system against fuel tank safety standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043 [which corresponds with the FAA's Special Federal Aviation Regulation (SFAR) 88]. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that a number of modifications to the fuel system are required to mitigate unsafe conditions that could result in potential ignition source within the fuel system.

The Bombardier modifications include:

- Modsum 4–126330, "Fuel Tank System Design Left and Right Side (SFAR 88) Retrofit." The retrofit includes replacing certain fittings, couplings, o-rings, gaskets, fuel adapter, and other related components with new, improved parts; applying alodine 1132 to certain areas of a wing rib and a wing spar; and replacing a certain doubler on the front wing spar with a new, improved doubler.
- Modsum 4–126366, "Fuel Tank System and Fuel Indication—Wiring Identification, Segregation and

Installation (High Level Sensor and Fuel Quantity Indication)—Retrofit." The retrofit includes adding new wiring with protective sleeving, reworking existing wiring, labeling and separating the fuel quantity indicating (FQI) wiring and high level sensor wiring from other wiring, enhancing the electro-magnetic interference (EMI) shielding of the wiring connected to the vent valve position switch, and installing additional provisions (bulkhead brackets) for wiring clips in the center fuselage.

- Modsum 4–901425, "Fuel Feed to APU—Replacement of Couplings in Center Wing Left Side—SFAR 88."
- Modsum 4–126370, "Fuel Tank System—Enhance Protective Covering for Electrical Cable Assembly," which includes reworking the contact area on the rib at Yw-42.000 to ensure adequate electrical bonding, installing spiral wrap on certain cable assemblies where existing spiral wrap does not extend 4 inches past the tie mounts, applying a dome seal on thread openings on a high level sensor, and installing fuel grommets at certain locations.
- Modsum 4–113580, "Fuel Indication—High Level Sensor—Application of Sealant to exposed end of Sensor Terminal Block Screws—Special Inspection and Rectification," which includes doing a detailed inspection of the high level sensor for correct sealant coverage ('dome seal') on the terminal screws, and applying sealant if necessary.

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

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Bombardier has issued Service Bulletins:

- 84–57–09, Revision B, dated September 3, 2008;
- 84–28–04, Revision B, dated October 21, 2009;
- 84–28–05, dated June 28, 2006;
- 84–28–03, Revision C, dated May 15, 2009; and
- 84–28–07, dated August 1, 2008.

Bombardier has also issued Fuel Systems Limitation (FSL) Task 284000–417 in Section 4–1, Fuel System Limitations, of Part 2—Airworthiness Limitation Items, Revision 5, dated April 21, 2010, of Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7.

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 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 proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

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 proposed 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 proposed AD.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 67 products of U.S. registry. We also estimate that it would take about 526 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Required parts would cost about $37,696 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 costs. 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 the proposed AD on U.S. operators to be $5,521,202, or $82,406 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 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:

Bombardier, Inc.: Docket No. FAA–2011–0036; Directorate Identifier 2010–NM–230–AD.

Comments Due Date

(a) We must receive comments by March 24, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category; with serial numbers (S/N) 4003, 4004, 4006, and 4008 through 4205 inclusive.

Subject

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

Reason

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

Bombardier Aerospace has completed a system safety review of the aeroplanes fuel system against fuel tank safety standards introduced in Chapter 525 of the Airworthiness Manual through Notice of Proposed Amendment (NPA) 2002–043 [which corresponds with the FAA's Special Federal Aviation Regulation (SFAR) 88]. The identified non-compliances were then assessed using Transport Canada Policy Letter No. 525–001, to determine if mandatory corrective action is required.

The assessment showed that a number of modifications to the fuel system are required to mitigate unsafe conditions that could result in potential ignition source within the fuel system.

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 Applicable to Airplanes Having S/N 4003, 4004, 4006 & 4008 Through 4118

(g) For airplanes having S/Ns 4003, 4004, 4006, and 4008 through 4118 inclusive: Within 6,000 flight hours after the effective date of this AD, incorporate the modifications required in paragraphs (g)(1), (g)(2), and (g)(3) of this AD, as applicable.

(1) Incorporate Bombardier Modsum 4–126330, "Fuel Tank System Design Left and Right Side (SFAR 88) Retrofit," by doing all the applicable actions in the Accomplishment Instructions of Bombardier Service Bulletin 84–57–09, Revision B, dated September 3, 2008.

(2) Incorporate Bombardier Modsum 4–126366, "Fuel Tank System and Fuel Indication—Wiring Identification, Segregation and Installation (High Level Sensor and Fuel Quantity Indication)—Retrofit," by doing all the applicable actions in the Accomplishment Instructions of Bombardier Service Bulletin 84–28–04, Revision B, dated October 21, 2009.

(3) For airplanes on which Bombardier Modsum 4–302000, "Standard Option—APU Installation," has been installed: Incorporate Bombardier Modsum 4–901425, "Fuel Feed to APU—Replacement of Couplings in Center Wing Left Side—SFAR 88," by doing all the applicable actions in the Accomplishment Instructions of Bombardier Service Bulletin 84–28–05, dated June 28, 2006.

(h) For airplanes having S/Ns 4003, 4004, 4006, and 4008 through 4118 inclusive, do Bombardier Fuel System Limitation (FSL) Task 284000–417 (Functional Check of the Fuel Tank Components and Plumbing Lines for Electrical Bonding) contained in Section 4–1, Fuel System Limitations, of Part 2—Airworthiness Limitation Items, Revision 5, dated April 21, 2010, of Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, at the applicable times specified in paragraphs (h)(1) and (h)(2) of this AD. Where the task specifies contacting Bombardier for technical assistance, this AD requires repairs/rework actions in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(1) Except as provided in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD, for airplanes that have incorporated either Bombardier Modsum 4–126330 or 4–901425 prior to the effective date of this AD: Do Bombardier FSL Task 284000–417 within 6,000 flight hours after the effective date of this AD.

(i) Airplanes on which Bombardier FSL Task 284000–417 was successfully completed after incorporation of Bombardier Modsum 4–126330 or 4–901425 do not need to comply with the requirements of paragraph (h) of this AD.

(ii) Airplanes on which Bombardier Modsum 4–126330 or 4–901425 was incorporated during manufacturing of the airplane do not need to comply with the requirements of paragraph (h) of this AD.

(2) For airplanes on which neither Bombardier Modsum 4–126330 nor 4–901425 were incorporated before the effective date of this AD: Do Bombardier FSL Task 284000–417 upon completion of the incorporation of Bombardier Modsum 4–126330 and, if applicable, Bombardier Modsum 4–901425.

Actions Applicable to Airplanes S/N 4003, 4004, 4006 & 4008 Through 4118 Inclusive, Manufactured Before September 21, 2005

(i) For airplanes having S/N 4003, 4004, 4006, and 4008 through 4118 inclusive, on which the date of issuance of the original Canadian standard airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness is before September 21, 2005: Within 6,000 flight hours after the effective date of this AD, incorporate Bombardier Modsum 4–126370, "Fuel Tank System—Enhance Protective Covering for Electrical Cable Assembly," by doing all the applicable actions in the Accomplishment Instructions of Bombardier Service Bulletin 84–28–03, Revision C, dated May 15, 2009.

Actions Applicable to Airplanes S/N 4003, 4004, 4006 & 4008 Through 4118 Inclusive, Manufactured on or After September 21, 2005

(j) For airplanes having S/Ns 4003, 4004, 4006, and 4008 through 4118 inclusive, on which the date of issuance of the original Canadian standard airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness is on or after September 21, 2005: Within 12,000 flight hours after the effective date of this AD, incorporate Bombardier Modsum 4–126370, "Fuel Tank System—Enhance Protective Covering for Electrical Cable Assembly," by doing all the applicable actions in the Accomplishment Instructions

of Bombardier Service Bulletin 84–28–03, Revision C, dated May 15, 2009.

Actions Applicable to Airplanes S/N 4119 Through 4205 Inclusive

(k) For airplanes having S/N 4119 through 4205 inclusive: Within 6,000 flight hours after the effective date of this AD, incorporate Bombardier Modsum 4–113580, "Fuel Indication—High Level Sensor—Application of Sealant to Exposed End of Sensor Terminal Block Screws—Special Inspection and Rectification," by doing all the applicable actions in the Accomplishment Instructions of Bombardier Service Bulletin 84–28–07, dated August 1, 2008.

Credit for Actions Accomplished in Accordance With Previous Service Information

(l) Incorporation of Bombardier Modsum 4–126330 prior to the effective date of this AD according to the instructions contained in Bombardier Service Bulletin 84–57–09, Revision A, dated March 19, 2007, meets the requirements of paragraph (g)(1) of this AD.

(m) Incorporation of Bombardier Modsum 4–126366 prior to the effective date of this AD according to the instructions contained in Bombardier Service Bulletin 84–28–04, dated June 29, 2006; or Revision A, dated November 15, 2006; meets the requirements of paragraph (g)(2) of this AD.

(n) Incorporation of Bombardier Modsum 4–126370 prior to the effective date of this AD according to instructions contained in Bombardier Service Bulletin 84–28–03, Revision B, dated October 18, 2006, meets the requirements of paragraphs (i) and (j) of this AD.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: The MCAI specifies to do Bombardier FSL Task 28400–417, but does not specify what to do if the functional check finds that measured resistance exceeds the specified values. This AD requires contacting the Manager, New York ACO, FAA, or TCCA (or its delegated agent) for repair/rework instructions.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANE–170, New York 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:* 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, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding 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.

Related Information

(p) Refer to MCAI Canadian Airworthiness Directive CF–2010–31, dated September 3, 2010; Bombardier Task 284000–417 in Section 4–1, Fuel System Limitations, of Part 2—Airworthiness Limitation Items, Revision 5, dated April 21, 2010, of Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7; and the Bombardier service bulletins identified in Table 1 of this AD; for related information.

TABLE 1—RELEVANT SERVICE INFORMATION

Bombardier Service Bulletin—	Revision—	Dated—
84–28–03	C	May 15, 2009.
84–28–04	B	October 21, 2009.
84–28–05	Original	June 28, 2006.
84–28–07	Original	August 1, 2008.
84–57–09	B	September 3, 2008.

Dated: Issued in Renton, Washington, on January 31, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–2613 Filed 2–4–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–159–FOR; OSM 2010–0017]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on removal of required amendment.

SUMMARY: We are announcing receipt of a request to remove a required amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). In response to a required program amendment codified in the Federal regulations, Pennsylvania has submitted information that it believes demonstrates that sufficient funds exist to guarantee coverage of the full cost of land reclamation at all sites originally permitted and bonded under its now-defunct alternative bonding system. Pennsylvania requests that the program amendment be removed based on the information provided.

This document gives the times and locations that the Pennsylvania program and this submittal are available for your inspection, the comment period during which you may submit written comments, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4 p.m., local time March 9, 2011. If requested, we will hold a public hearing on March 4, 2011. We will accept requests to speak until 4 p.m., local time on February 22, 2011.

ADDRESSES: You may submit comments, identified by "PA–159–FOR; Docket ID: OSM–2010–0017" by either of the following two methods:

Federal eRulemaking Portal: http://www.regulations.gov. The proposed rule has been assigned Docket ID: OSM–2010–0017. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.

Mail/Hand Delivery/Courier: Mr. George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, PA 17101.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Comment Procedures" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: In addition to obtaining copies of documents at *http://www.regulations.gov,* information may also be obtained at the addresses listed

below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Pittsburgh Field Division Office.

George Rieger, Chief, Pittsburgh Field Division, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, 415 Market St., Suite 304, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036, E-mail: *grieger@osmre.gov.*

Thomas Callaghan, P.G., Director, Bureau of Mining and Reclamation, Pennsylvania Department of Environmental Protection, Rachel Carson State Office Building, P.O. Box 8461, Harrisburg, Pennsylvania 17105–8461, Telephone: (717) 787–5015, E-mail: *tcallaghan@state.pa.us.*

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036. E-mail: *grieger@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Pennsylvania program in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning the Pennsylvania program and program amendments at 30 CFR 938.11, 938.12, 938.13, 938.15, and 938.16.

II. Description of the Request

By letter dated October 1, 2010, (Administrative Record Number PA 802.72), Pennsylvania sent us a response to a program amendment that was required by OSMRE in a final rule notice published in the **Federal Register** on August 10, 2010, (75 FR 48526) and codified in the Federal Regulations at 30 CFR 938.16(h). The revised required amendment was in response to a previously required bonding amendment requirement codified at 30 CFR 938.16(h) and Pennsylvania's subsequent submission. After review of the amendment submission, we approved the majority of the submission but determined Pennsylvania had not provided guaranteed funding to cover the cost of the outstanding land reclamation liabilities at the Lehigh Coal and Navigation and Coal Contractors, Inc. sites in the event the bonds for these sites are forfeited. We revised the required amendment at 30 CFR 938.16(h) and required the PADEP to ensure its program provides suitable, enforceable funding mechanisms that are sufficient to guarantee coverage of the full cost of land reclamation at all sites originally permitted and bonded under the alternative bonding system.

Pennsylvania provided information it believes demonstrates that available funds are more than sufficient to guarantee coverage of the full cost of land reclamation at these two sites. The supporting information, can be obtained from the locations listed under **ADDRESSES**, includes a Demonstration of Available Funding; Coal Contractors 2009 Annual Bond Review; Lehigh Coal and Navigation Annual Bond Review; Updated Estimates for the Alternative Bonding System Bond Forfeiture Discharge Treatment Sites; and Updated Land Reclamation Estimates. Pennsylvania requests that we remove the condition found at 30 CFR 938.16(h) based on this demonstration.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Pennsylvania program.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent Tribal or Federal laws or regulations, technical literature, or other relevant publications. We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed above (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., local time February 22, 2011. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold the hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If there is only limited interest in participating in a public hearing, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the submission, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSM for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 12, 2010.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2011–2601 Filed 2–4–11; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–116–FOR; OSM–2009–0008]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We are reopening the public comment period on the proposed West Virginia Regulatory Program rule published on October 21, 2009. The comment period is being reopened in order to afford the public the opportunity to comment on the proposed amendment to change a type of cropland postmining land use from "bio oil" to "bio fuel." In the initial proposed rule announcing receipt of the amendment, the Office of Surface Mining Reclamation and Enforcement (OSM) characterized the change as non-substantive, and did not note where the changes occurred throughout the regulations. Concerns were raised about the use of "bio-fuel" as a postmining land use (unrelated to this amendment) and OSM asked the West Virginia Department of Environmental Protection (WVDEP) to clarify why the State was changing the term "bio-oil" to "bio-fuel."

DATES: Comments on the proposed rule must be received on or before 4 p.m., local time on February 22, 2011.

ADDRESSES: You may submit comments by any of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule has been assigned Docket ID: OSM–2009–0008. If you would like to submit comments through the Federal eRulemaking Portal, go to *http://www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery:* Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301. Please include the rule identifier (WV–116–FOR) with your written comments. *Instructions:* All submissions received must include the agency Docket ID (OSM–2009–0008) for this rulemaking.

For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the **SUPPLEMENTARY INFORMATION** section of this document. You may also request to speak at a public hearing by any of the methods listed above or by contacting the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Docket: The proposed rule and any comments that are submitted may be viewed over the Internet at *http://www.regulations.gov.* Look for Docket ID OSM–2009–0008. In addition, you may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may also receive one free copy of this amendment by contacting OSM's Charleston Field Office listed below.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 601 57th Street, SE., Charleston, WV 25304, Telephone: (304) 926–0490.

In addition, you may review a copy of the amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 604 Cheat Road, Suite 150, Morgantown, West Virginia 26508, Telephone: (304) 291–4004. (By appointment only).

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION: On October 21, 2009 (74 FR 53972), we published a proposed rule that would revise the West Virginia surface mining regulatory program. The revisions would address various issues including, but not limited to, continued oversight by the Secretary of "approved" persons who prepare, sign, or certify mining permit applications and related materials; regarding incidental boundary revisions to existing permits, clarifying that certain types of collateral activities are part of the primary mining operations and therefore subject to the same acreage limitations, while providing more relevant and exacting criteria for the Secretary to consider in evaluating an application for revision; deleting the bonding matrix form; changing term "Bio-oil" to "Bio fuel"; and clarifying standards contained in subsection 9.3.f that pertain to areas developed for hayland or pasture use.

In our announcement of the State's submission of the amendment, we stated that the "changes regarding the term 'Bio-oil' to 'Bio-fuel' in the program amendments are non-substantive in nature." Subsequently, concerns within OSM arose regarding the definitions WVDEP was using for the terms and we asked them to clarify both definitions. In an e-mail to OSM dated July 26, 2010, WVDEP stated that "Biofuels cover are [sic] a wide range of fuels which are derived from biomass. The term covers solid biomass, liquid fuels and various biogases while bio-oil was limited to biodiesel." Given these definitions, it appears that we inadvertently mischaracterized the change from "bio-oil" to "bio-fuel" as non-substantive and the issue was not properly explained in the amendment.

Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the submission satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the West Virginia program.

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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We cannot ensure that comments received after the close of the comment period (*see* **DATES**) or sent to an address other than those listed above (*see* **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Electronic or Written Comments

If you submit written comments, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We would appreciate all comments relating to this specific issue, but those most useful and likely to influence decisions on the final rule will be those that either involve personal experience or include citations to and analysis of the Surface Mining Control and Reclamation Act of 1977, its legislative history, its implementing regulations, case law, other State or Federal laws and regulations, data, technical literature, or other relevant publications. Specifically, we are asking for comments solely on the State's proposed program amendments at subsection 7.8 to change the term "bio-oil" to "bio-fuel."

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 20, 2010.

Michael K. Robinson,

Acting Regional Director, Appalachian Region.

[FR Doc. 2011–1512 Filed 2–4–11; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2007–0662; FRL–9262–5]

Disapproval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana—Air Quality, Subchapter 7, Subchapter 16 and Subchapter 17

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a proposed rule which published on January 6, 2011 (76 FR 758). In the 76 FR 758 **Federal Register**, EPA proposed to disapprove the revisions and new rules as submitted by the State of Montana on October 16, 2006 and November 1, 2006. EPA found that these revisions and new rules, pertaining to the regulation of oil and gas well facilities and applicability to Montana's air quality permitting requirements, do not meet the requirements of the Clean Air Act and EPA's Minor New Source Review (NSR) regulations. The 76 FR 758 **Federal Register** also stated that comments must be received on or before February 7, 2011. EPA is extending the comment period through February 28, 2011, due to a request from several commenters for an extension.

DATES: Comments must be received on or before February 28, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2007–0662, by one of the following methods:

- *www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: leone.kevin@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129.
- *Hand Delivery:* Callie Videtich, Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop St., Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.
- For additional information on submitting comments, see the January 6, 2011 (76 FR 758) proposed rule.

FOR FURTHER INFORMATION CONTACT: Kevin Leone, Air Program, Mail Code 8P–AR, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129, phone (303) 312–6227, or e-mail *leone.kevin@epa.gov.*

Dated: January 27, 2011.

Carol Rushin,

Deputy Regional Administrator, Region 8.

[FR Doc. 2011–2607 Filed 2–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2010–1082; FRL–9262–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Determination of Attainment for the Pittsburgh-Beaver Valley 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to make a determination that the Pittsburgh-Beaver Valley 8-hour ozone nonattainment area (the Pittsburgh Area) has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS). This proposed determination is based upon complete, quality assured, and certified ambient air monitoring data that show the area has monitored attainment of the 1997 8-hour ozone NAAQS for the 2007 to 2009 monitoring period. Preliminary air quality monitoring data available for 2010 are consistent with continued attainment. If this proposed determination is made final, the requirement for the Commonwealth of Pennsylvania to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning requirements related to attainment of the 1997 8-hour ozone NAAQS for the Pittsburgh Area shall be suspended for as long as the nonattainment area continues to meet the 1997 8-hour ozone NAAQS. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before March 9, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2010–1082 by one of the following methods

A. *www.regulations.gov.* Follow the online instructions for submitting comments.

B. E-mail: *fernandez.cristina@epa.gov.*

C. Mail: EPA–R03–OAR–2010–1082, Cristina Fernandez, Associate Director, Office of Air Quality Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. 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–2010–1082. 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 Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 814–2181, or by e-mail at *pino.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: For detailed information regarding this proposal, EPA prepared a Technical Support Document (TSD). The TSD can be viewed at *http://www.regulations.gov.* The following outline is provided to aid in locating information in this action.

I. What is EPA proposing?

EPA is proposing to determine that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS. The Pittsburgh Area is comprised of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties in Pennsylvania. EPA's determination is based upon complete, quality assured, quality controlled, and certified ambient air quality monitoring data for the years 2007 to 2009 showing that the Pittsburgh Area has monitored attainment of the 1997 8-hour ozone NAAQS. Preliminary air quality monitoring data available for 2010 are consistent with continued attainment.

On March 27, 2008 (73 FR 16436), EPA promulgated a revised 8-hour ozone standard of 0.075 parts per million (ppm). On January 6, 2010, EPA again addressed this 2008 revised standard and proposed to set the primary 8-hour ozone standard within the range of 0.060 to 0.070 ppm, rather than at 0.075 ppm. EPA is working to complete reconsideration of the standard and thereafter will proceed with attainment/nonattainment area designations. This proposed rulemaking relates only to a determination of attainment for the 1997 8-hour ozone standard and is not affected by the ongoing process of reconsidering the revised 2008 standard. This action addresses only the 1997 8-hour ozone standard of 0.08 ppm, and does not address any subsequently revised 8-hour ozone standard.

II. What is the background for this action?

A. The Pittsburgh Area

In 1997, EPA revised the health-based NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour time frame. EPA set the 8-hour ozone standard based on scientific evidence demonstrating that ozone causes adverse health effects at lower ozone concentrations and over longer periods of time, than was understood when the pre-existing 1-hour ozone standard was set. EPA determined that the 8-hour standard would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

On April 30, 2004 (69 FR 23951), EPA finalized its attainment/nonattainment designations for areas across the country with respect to the 8-hour ozone standard. These actions became effective on June 15, 2004. Among those nonattainment areas is the Pittsburgh Area, which includes Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties in Pennsylvania. See 40 CFR 81.339.

B. Determination of Attainment

Under the provisions of EPA's ozone implementation rule (*see* 40 CFR 51.918), if EPA issues a determination that an area is attaining the relevant standard (through a rulemaking that includes public notice and comment), it will suspend the area's obligations to submit an attainment demonstration, RACM, RFP, contingency measures and other planning requirements related to attainment for as long as the area continues to attain. The determination of attainment is not equivalent to a redesignation. The state must still meet the statutory requirements for redesignation in order to be redesignated to attainment.

C. Ambient Air Quality Monitoring Data

Complete, quality assured, certified 8-hour ozone air quality monitoring data for 2007 through 2009, as well as preliminary data available to date for 2010, show that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS.

III. What is the effect of this action?

As noted, if the proposed action is finalized, under 40 CFR section 51.918 it will suspend the obligation to submit

certain planning requirements described above; however, it will not constitute a redesignation to attainment under section 107(d)(3) of the CAA. The designation status of the Pittsburgh Area will remain nonattainment for the 1997 8-hour ozone NAAQS until such time as EPA determines that the area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan.

A. Determination of Attainment

EPA is proposing to determine that the Pittsburgh Area is attaining the 1997 8-hour ozone NAAQS. In accordance with 40 CFR 51.918, if EPA finalizes this determination, the obligation under the CAA for the Commonwealth of Pennsylvania to submit an attainment demonstration and RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS for the Pittsburgh Area would be suspended for so long as the area continues to attain the 1997 8-hour ozone NAAQS. Although these requirements are suspended, EPA is not precluded from acting upon these elements, if Pennsylvania submits them for EPA review and approval.

If finalized, the proposed determination will:

(1) Suspend the requirements to submit an attainment demonstration, RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS;

(2) Continue until such time, if any, that EPA (i) redesignates the area to attainment at which time those requirements no longer apply, or (ii) subsequently determines that the area has violated the 1997 8-hour ozone NAAQS;

(3) Be separate from, and not influence or otherwise affect, any future designation determination or requirements for the area based on any new or revised ozone NAAQS; and

(4) Remain in effect regardless of whether EPA designates this area as a nonattainment area for purposes of any new or revised ozone NAAQS.

If this rulemaking is finalized and EPA subsequently determines, after notice-and-comment rulemaking, that the Pittsburgh Area has violated the 1997 8-hour ozone NAAQS, the basis for the suspension of the specific requirements, set forth at 40 CFR 51.918, would no longer exist, and the Pittsburgh Area would thereafter have to address applicable requirements.

B. Subpart 1 Designation

Under the implementation rule for the 1997 8-hour ozone standard, EPA designated certain areas under title I, part D, subpart 1 of the CAA (subpart 1) if they had a 1-hour design value below 0.121 ppm. In June 2004, EPA designated the Pittsburgh Area nonattainment under subpart 1 for the 1997 8-hour ozone standard. In June 2007, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) vacated the portion of the 1997 ozone implementation rule that allowed areas to be designated under subpart 1. On January 16, 2009 (74 FR 2936), EPA published a proposed rule to address, among other issues, the D.C. Circuit Court vacatur of the classification system that EPA used to designate a subset of initial 1997 8-hour ozone nonattainment areas under subpart 1. In that rulemaking, EPA proposed that all areas designated nonattainment for the 1997 8-hour ozone NAAQS under subpart 1 would be classified as subpart 2 areas (hereafter referred to as the "Subpart 1/Subpart 2 1997 8-Hour Ozone Rulemaking"). The Pittsburgh Area is among those areas that would be classified under subpart 2 if EPA's proposal is finalized. EPA has not yet completed its final rulemaking action for the Subpart 1/Subpart 2 1997 8-Hour Ozone Rulemaking. When the Subpart 1/Subpart 2 1997 8-Hour Ozone Rulemaking is finalized, and if the Pittsburgh Area continues in attainment for the 1997 8-hour ozone NAAQS, EPA will address in a future rulemaking the consequences of a determination of attainment for any requirements to which the Pittsburgh Area becomes subject as a result of its reclassification. If, after the Pittsburgh Area is classified under subpart 2, EPA determines in a future rulemaking that the Pittsburgh Area continues to be in attainment, then the obligation to submit the applicable attainment-related requirements for its new classification would be suspended in accordance with 40 CFR 51.918.

IV. What is EPA's analysis of the relevant air quality data?

Under EPA regulations at 40 CFR part 50, the 1997 8-hour ozone standard is attained at a site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations at an ozone monitor is less than or equal to 0.08 ppm. This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm (based on the rounding convention in 40 CFR part 50, appendix I) at each monitoring site within the area, then the area is meeting the NAAQS. The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of 40 CFR Part 50.

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the ozone ambient air monitoring data for the monitoring period from 2007 through 2009 for the Pittsburgh Area, as recorded in the EPA Air Quality System (AQS) database. On the basis of that review, EPA has concluded that this area attained the 1997 8-hour ozone NAAQS based on data for the 2007-2009 ozone seasons. Table 1 shows the ozone design values for the Pittsburgh Area monitors based on 2007–2009 ambient air quality monitoring data. Preliminary data available for 2010, summarized in Table 2, are also consistent with continued attainment.

TABLE 1—2007–2009 PITTSBURGH AREA 8-HOUR OZONE DESIGN VALUES

County	Monitor ID	2007–2009 Average % data completeness	2007–2009 Design value (ppm)
Allegheny	420030008	99	0.077
	420030010	99	0.074
	420030067	98	0.073
	420031005	97	0.082
Armstrong	420050001	100	0.077
Beaver	420070002	97	0.073
	420070005	97	0.071
	420070014	100	0.073
Washington	421250005	99	0.072
	421250200	100	0.068

TABLE 1—2007–2009 PITTSBURGH AREA 8-HOUR OZONE DESIGN VALUES—Continued

County	Monitor ID	2007–2009 Average % data completeness	2007–2009 Design value (ppm)
	421255001	95	0.072
Westmoreland	421290006	100	0.071
	421290008	99	0.072

TABLE 2—PRELIMINARY 2008–2010 PITTSBURGH AREA 8-HOUR OZONE DESIGN VALUES

County	Monitor ID	2008–2010 Average % data completeness	Preliminary 2008–2010 Design value (ppm)
Allegheny	420030008	98	0.076
	420030010	96	0.072
	420030067	99	0.074
	420031005	99	0.082
Armstrong	420050001	100	0/076
Beaver	420070002	97	0.071
	420070005	96	0.073
	420070014	95	0.072
Washington	421250005	99	0.070
	421250200	99	0.068
	421255001	94	0.071
Westmoreland	421290006	99	0.069
	421290008	98	0.072

EPA's review of the data indicates that the Pittsburgh Area has met the 1997 8-hour ozone NAAQS. Additional information on air quality data for the Pittsburgh Area can be found in the TSD.

V. Proposed Action

EPA is proposing to determine that the Pittsburgh Area has attained the 1997 8-hour ozone NAAQS based on 2007–2009 complete, quality-assured, and certified ambient air quality monitoring data. Preliminary data available to date for 2010 are consistent with continued attainment. As provided in 40 CFR 51.918, if EPA finalizes this determination, it would suspend the requirements for the Commonwealth of Pennsylvania to submit, for the Pittsburgh Area, an attainment demonstration and associated RACM, RFP plan, contingency measures, and any other planning requirements related to attainment of the 1997 8-hour ozone NAAQS as long as the area continues to attain the 1997 8-hour ozone NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

VI. Statutory and Executive Order Reviews

This action proposes to make a determination of attainment based on air quality, and would, if finalized, result in the suspension of certain federal requirements, and would 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 determination that the Pittsburgh Area has attained the1997 8-hour ozone 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, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 24, 2011.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2011–2605 Filed 2–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2009–0962; FRL–9262–1]

North Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: North Carolina has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to North Carolina. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. EPA has explained the reasons for this authorization in the preamble of the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal.

If EPA receives comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by March 9, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2009–0962 by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: johnson.otis@epa.gov.*
- *Fax:* (404) 562–9964 (prior to faxing, please notify the EPA contact listed below).
- *Mail:* Send written comments to Otis Johnson, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
- *Hand Delivery or Courier:* Otis Johnson, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. 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–R04–RCRA–2009–0962. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional 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 *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov,* or in hard copy. You may view and copy North Carolina's application at the EPA, Region 4, RCRA Division, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

You may also view and copy North Carolina's application from 8 a.m. to 4 p.m. at the North Carolina Department of Environment and Natural Resources, 401 Oberlin Road, Suite 150, Raleigh, North Carolina 29201; telephone number: (919) 733–2178.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; telephone number: (404) 562–8481; fax number: (404) 562–9964; e-mail address: *johnson.otis@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: January 6, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–2498 Filed 2–4–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R04–RCRA–2010–0810; FRL–9262–3]

Florida: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Florida has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Florida. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble of the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further

action on this proposal. If EPA receives comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment.

DATES: Send your written comments by March 9, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–RCRA–2010–0810 by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *E-mail: johnson.otis@epa.gov*
- *Fax:* (404) 562–9964 (prior to faxing, please notify the EPA contact listed below).
- *Mail:* Send written comments to Otis Johnson, Permits and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.
- *Hand Delivery or Courier:* Otis Johnson, Permits and State Programs, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. 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–R04–RCRA–2010–0810. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. (For additional 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 *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov,* or in hard copy. You may view and copy Florida's application at the EPA, Region 4, RCRA Division, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

You may also view and copy Florida's application from 8 a.m. to 4 p.m. at the Florida Department of Environmental Protection, Bob Martinez Center, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400; telephone number: (850) 245–8713.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Permit and State Programs Section, RCRA Programs and Materials Management Branch, RCRA Division, U.S. Environmental Protection Agency, The Sam Nunn Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303; telephone number: (404) 562–8481; fax number: (404) 562–9964; e-mail address: *johnson.otis@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: January 6, 2011.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 2011–2501 Filed 2–4–11; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 76, No. 25
Monday, February 7, 2011

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

February 1, 2011.

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 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) 720–8681.

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.

Agricultural Marketing Service

Title: Vegetable and Specialty Crops.

OMB Control Number: 0581–0178.

Summary of Collection: The Agricultural Marketing Agreement Act of 1937 was designed to permit regulation of certain agricultural commodities for the purpose of providing orderly marketing conditions in interstate commerce and improving returns to growers. The Orders and Agreements become effective only after public hearings are held. The vegetable, and specialty crops marketing order programs provide an opportunity for producers in specified production areas to work together to solve marketing problems that cannot be solved individually.

Need and Use of the Information: Various forms are used to collect information necessary to effectively carry out the requirements of the Act and the Order/Agreement. Information collected is used to formulate market policy, track current inventory and statistical data for market development programs, ensure compliance, and verify eligibility, monitor and record grower's information. If this information were not collected, it would eliminate data needed to keep the industry and the Secretary abreast of changes at the State and local level.

Description of Respondents: Business or other for profit; farms; individuals or households.

Number of Respondents: 20,626.

Frequency of Responses: Reporting: On occasion, quarterly, biennially, weekly, semi-annually, monthly, annually and recordkeeping.

Total Burden Hours: 26,732.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–2560 Filed 2–4–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 1, 2011.

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) 720–8681.

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.

Grain Inspection, Packers & Stockyards Administration

Title: "Clear Title"—Protection for Purchasers of Farm Products.

OMB Control Number: 0580–0016.

Summary of Collection: Grain Inspection, Packers and Stockyards Administration (GIPSA) have the responsibility for the Clear Title Program (Section 1324 of the Food Security Act of 1985. Clear Title Program was enacted to facilitate interstate commerce in farm products and protect purchasers of farm products by enabling States to establish central filing systems. The Clear Title Program

purpose is to remove burden on and obstruction to interstate commerce in farm products such as double payment for the products, once at the time of purchase and again when the seller fails to repay the lender. The Food Security Act of 1985 permits the states to establish "central filing systems." These central filing systems notify buyers of farm products of any mortgages or liens on the products. There are 19 states that currently have certified central filing systems.

Need and Use of the Information: A state submits information one time to GIPSA when applying for certification. GIPSA reviews the information submitted by the states to certify that those central filing systems meet the criteria set forth in section 1324 of the Food Security Act of 1985. The information received from the State is available for public inspection.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 1.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 80.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2011–2561 Filed 2–4–11; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Healthy Incentives Pilot (HIP) Evaluation

AGENCY: Food and Nutrition Service (FNS), United States Department of Agriculture (USDA).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new collection for the Food and Nutrition Service to examine the impact and implementation of the Healthy Incentives Pilot (HIP) that will begin in Hampden County, Massachusetts (MA) in November 2011.

DATES: Written comments must be received on or before April 8, 2011.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Steven Carlson, Office of Research and Analysis, Food and Nutrition Service/USDA, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at 703–305–2576 or via e-mail to *Steve.Carlson@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the Office of Research and Analysis, Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Steven Carlson at 703–305–2017.

SUPPLEMENTARY INFORMATION:

Title: Healthy Incentives Pilot (HIP) Evaluation.

OMB Number: 0584–NEW.

Expiration Date: Not yet determined.

Type of Request: New collection.

Abstract: The Healthy Incentive Pilot (HIP) is authorized by the Food, Conservation, and Energy Act of 2008, and it is expected to operate for 15 months in Hampden County, MA. HIP will provide financial incentives to Supplemental Nutrition Assistance Program (SNAP) households to encourage their purchase and consumption of fruits and vegetables. SNAP households chosen to participate in HIP will be eligible to earn incentives equal to 30% of their purchase price for eligible fruits and vegetables. The incentive payment will be added to the HIP participant's SNAP benefit account. Participants will be able to view their accumulated monthly value of incentives on their cash register receipt.

The objectives of the HIP evaluation are to:

- Estimate the impact of HIP on individual food consumption of SNAP recipients;
- Understand the factors that influence how HIP impacts SNAP recipients;
- Describe the implementation and operation of HIP;
- Understand the effect of HIP on the grantee and its partners; and
- Estimate the costs associated with HIP.

The data collection activities to be undertaken subject to this notice include:

- SNAP recipient phone surveys (with in-person follow-up) before program implementation, early (3 months) implementation, and late (12-months) implementation;
- Three SNAP recipient focus groups at early implementation and again at late implementation phase;
- Mail (with phone follow-up) surveys of participating and non-participating retailers pre-implementation and late implementation;
- Observations in 10 participating stores at pre-implementation, early implementation, and late implementation; and
- In-person interviews with HIP stakeholders (State and local SNAP officials, State and local partners, Electronic Benefit Transfer (EBT) vendors, third party processors, and integrated retailers) at pre-implementation, early, and late implementation.

To evaluate the effect of HIP on participating households, data will be collected from SNAP recipients in Hampden County, MA. To examine the implementation of the HIP program, data will be collected from retailers, State and local SNAP officials, State and local partners, EBT vendors, and third party processors.

Affected Public: Respondent groups identified include: (1) SNAP recipients; (2) retailers; (3) state and local officials; (4) state and local partners; and (5) EBT vendors, third party processors, and integrated retailers.

Estimated Number of Respondents: The total estimated number of respondents is 2,945. This includes: 2,638 SNAP recipients who will participate in phone surveys (70% will complete baseline interview, 80% and 75% will complete round 2 and round 3 interviews respectively; 10% subsample or 300 recipients will

complete a second 24-hour dietary recall in rounds 2 and 3); an additional sample of 66 SNAP recipients who will participate in focus groups (90% response rate); 207 retailers (80% percent will complete survey); 19 State and local SNAP officials (89% will complete the interview); 6 State and local partners (83% will complete the interview); and 9 EBT vendors/third party processors/integrated retailers (89% will complete the interview).

Estimated Number of Responses per Respondent: Data from SNAP recipients will be collected three times, through telephone interviews, in-person interviews, and focus groups. A 10 percent subsample of the SNAP recipients will complete a second 24-hour dietary recall on a nonconsecutive day. Stakeholder data will be gathered through retailer surveys and observations; in-person interviews will also be conducted with State and local officials, State and local partners, EBT vendors, third party processors, and integrated retailers.

Estimated Total Annual Responses: 8,221.

Estimated Time per Response: About 35 minutes (0.58 hours). The estimated time of response varies from 3 to 90 minutes depending on respondent group, as shown in the table below.

Estimated Total Annual Burden on Respondents: 286,154 minutes (4769.24 hours). See the table below for estimated total annual burden for each type of respondent.

Respondent		Estimated number respondent	Responses annually per respondent	Total annual responses	Estimated average number of hours per response
SNAP recipients					
Completed	1,943	3	5,829	0.7672	4,472.01
Attempted	695	3	2,085	0.0521	108.63
SNAP recipient focus groups					
Completed	60	1	60	1.0000	60.00
Attempted	6	1	6	0.0500	0.30
Retailers					
Completed	165	1	165	0.5000	82.50
Attempted	42	1	42	0.0500	2.10
Local and State SNAP Officials					
Completed	17	1	17	1.4118	24.00
Attempted	2	1	2	0.0500	0.10
Local and State Partners					
Completed	5	1	5	1.5000	7.50
Attempted	1	1	1	0.0500	0.05
EBT vendors/3rd party processors					
Completed	8	1	8	1.5000	12.00
Attempted	1	1	1	0.0500	0.05
Totals	2,945	.....	8,221	.....	4,769.24

Dated: January 25, 2011.

Julia Paradis,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–2564 Filed 2–4–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Central Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343), the Salmon-Challis National Forest's Central Idaho Resource Advisory Committee will conduct a business meeting which is open to the public.

DATES: Friday, February 25, 2011, beginning at 10 a.m.

ADDRESSES: Salmon-Challis N.F. South Zone Office, Highway 93, Challis, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include, presentation of proposed projects, evaluation of some projects proposals, and approval and recommendation of some projects for Title II funding for 2011 and 2012. Some RAC members may attend the meeting by conference call, telephone, or electronically. The meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Frank V. Guzman, Forest Supervisor and Designated Federal Officer, at 208–756–5111.

Dated: January 31, 2011.

Frank V. Guzman,

Forest Supervisor, Salmon-Challis National Forest.

[FR Doc. 2011–2579 Filed 2–4–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Generic Clearance for Survey Research Studies. Revision to burden hours may be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by April 8, 2011 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0248, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Generic Clearance to Conduct Survey Research Studies.

OMB Control Number: 0535–0248.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: The National Agricultural Statistics Service (NASS) of the United States Department of Agriculture (USDA) will request approval from the Office of Management and Budget (OMB) for generic clearance that will allow NASS to rigorously develop, test, and evaluate its survey instruments and methodologies. The primary objectives of the National Agricultural Statistics Service are to prepare and issue State and national estimates of crop production, livestock production, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture. This request is part of an on-going initiative to improve NASS surveys, as recommended by both its own guidelines and those of OMB.

In the last decade, state-of-the art techniques have been increasingly instituted by NASS and other Federal agencies and are now routinely used to improve the quality and timeliness of survey data and analyses, while simultaneously reducing respondents' cognitive workload and burden. The purpose of this generic clearance is to allow NASS to continue to adopt and use these state-of-the-art techniques to improve its current data collections on agriculture. They will also be used to aid in the development of new surveys.

NASS envisions using a variety of survey improvement techniques, as appropriate to the individual project under investigation. These include focus groups, cognitive and usability laboratory and field techniques, exploratory interviews, behavior coding, respondent debriefing, pilot surveys, and split-panel tests.

Following standard OMB requirements NASS will submit a change request to OMB individually for each survey improvement project it undertakes under this generic clearance and provide OMB with a copy of the questionnaire (if one is used), and all other materials describing the project.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–113) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995). NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)," **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for these collections of information is estimated to average from 30 minutes to 2 hours per respondent, dependant upon the survey and the technique used to test for that particular survey.

Respondents: Farmers, ranchers, farm managers, farm contractors, agri-businesses, and households.

Estimated Number of Respondents: 3,300.

Frequency of Responses: On occasion.

Estimated Total Annual Burden: 4,950 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, January 20, 2011.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2011–2562 Filed 2–4–11; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Organic Production Survey. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

DATES: Comments on this notice must be received by April 8, 2011 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535–0249, by any of the following methods:

- *E-mail: ombofficer@nass.usda.gov.* Include docket number above in the subject line of the message.
- *Fax:* (202) 720–6396.
- *Mail:* Mail any paper, disk, or CD–ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.
- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate

Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Organic Production Survey.

OMB Control Number: 0535–0249.

Expiration Date of Previous Approval: April 30, 2012.

Type of Request: To revise and extend a currently approved information collection for a period of three years.

Abstract: The primary objective of the National Agricultural Statistics Service (NASS) is to prepare and issue State and national estimates of crop and livestock production, prices, and disposition as well as economic statistics, farm numbers, land values, on-farm pesticide usage, pest crop management practices, as well as the Census of Agriculture. In 2009, NASS conducted the 2008 Organic Production Survey (OMB # 0535–0249). This was originally designed to be conducted once every five years as a follow-on-survey to the Census of Agriculture. The USDA Risk Management Agency (RMA) has made a formal agreement with NASS to conduct this as an annual survey. The pilot survey year would be 2012 for the reference period of 2011. The questionnaire would be similar to what was used in the 2009 survey. Some noticeable changes that would occur in the annual survey include the removal of the organic floriculture and nursery questions and some of the organic production practices questions. In their place we plan to incorporate more commodity specific questions that would be directed at different commodities each year. In the pilot year we plan to target organically grown apples and grapes. Each year as new target commodities are selected for this survey an update will be submitted to OMB containing the non-substantive changes.

The census-based survey will include all known farm operators who produce organically certified crops and/or livestock. The survey will be conducted in all States. Some operational level data will be collected to use in classifying each operation for summary purposes. The majority of the questions will involve production data (acres planted, acres harvested, quantity harvested, quantity sold, value of sale, etc.), production expenses, and marketing practices.

The pilot survey reference date will be the calendar year 2011. Approximately 15,000 operations will be contacted by mail in early January 2012, with a second mailing later in the month to non-respondents. Telephone and personal enumeration will be used for remaining non-response follow up. The National Agricultural Statistics Service will publish summaries in October 2012 at both the State level and for each major organic commodity when possible. Some State level data may need to be published on regional or national level due to confidentiality rules.

Under the 2008 Farm Bill (Pub. L. 110–246, Section 12023, Part D) some of the duties of the Federal Crop Insurance Corporation (FCIC) are defined as "(i) IN GENERAL.—The Corporation shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate an annual report on progress made in developing and improving Federal crop insurance for organic crops, including—"(I) the numbers and varieties of organic crops insured; "(II) the development of new insurance approaches; and "(III) the progress of implementing the initiatives required under this paragraph, including the rate at which additional price elections are adopted for organic crops."

Authority: These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501, et seq.) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)," **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Farmers and Ranchers.

Estimated Number of Respondents: 15,000.

Estimated Total Annual Burden on Respondents: 7,900 hours.

Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS Clearance Officer, at (202) 690–2388.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, technological or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, January 13, 2011.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. 2011–2563 Filed 2–4–11; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 8–2011]

Foreign-Trade Zone 53—Tulsa, OK; Application for Reorganization/ Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Tulsa-Rogers County Port Authority, grantee of FTZ 53, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170–1173, 01/12/09 (correction 74 FR 3987, 01/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new "usage-driven" FTZ sites for operators/users located within a grantee's "service area" in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on February 1, 2011.

FTZ 53 was approved by the Board on December 7, 1979 (Board Order 151, 44 FR 76382, 12/26/79), and expanded on September 16, 1993 (Board Order 655,

58 FR 50330, 09/27/93). The current zone project includes the following sites: *Site 1* (70 acres)—within the Port of Catoosa, Rogers County; *Site 2* (1,731 acres)—within the Tulsa International Airport, 7777 East Apache, Tulsa (Tulsa County); *Site 3* (750 acres)—within the Mid-America Industrial Park, 4075 Sanders Mitchell Street, Pryor Creek (Mayes County); *Site 4* (160 acres)—Bartlesville Industrial Park, U.S. Highway 60 and Bison Road, Bartlesville (Washington County); and, *Site 5* (500 acres)—Stillwater Industrial Park, located east of U.S. Highway 177, Stillwater (Payne County).

The grantee's proposed service area under the ASF would be Rogers County, Oklahoma. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Tulsa Customs and Border Protection port of entry. The grantee proposes to retain its existing sites (Sites 2–5) located in Tulsa, Mayes, Washington and Payne Counties.

The applicant is requesting authority to reorganize and expand its existing zone project to include all of its existing as "magnet" sites. The applicant is also requesting approval of the following new "magnet" sites: *Proposed Site 6* (550 acres)—Claremore Business and Industrial Park, Lowry Road and Highway 66, Claremore (Rogers County); and, *Proposed Site 7* (525.70 acres)—Claremore Regional Airport Industrial Park, 19502 Rogers Post Road, Claremore (Rogers County). Since the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 53's authorized subzones.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is April 8, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 23, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the "Reading Room" section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.*

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: February 1, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–2634 Filed 2–4–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Amended Final Results of the Thirteenth Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On December 27, 2010, the Department of Commerce (the Department) published its final results of the thirteenth administrative review of the antidumping duty order on certain pasta from Italy for the period of review (POR) of July 1, 2008, through June 30, 2009. *See Certain Pasta from Italy: Notice of Final Results of the Thirteenth Antidumping Duty Administrative Review,* 75 FR 81212 (December 27, 2010) (*Final Results*). We are amending our final results to correct ministerial errors made in the calculation of the dumping margin for Pastificio Attilio Mastromauro-Pasta Granoro S.r. L. (Granoro), pursuant to section 751(h) of the Tariff Act of 1930, as amended (the Act).

DATES: *Effective Date:* February 7, 2011.

FOR FURTHER INFORMATION CONTACT: Jolanta Lawska, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–8362.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2010, the margin calculations were released to Granoro.[1] On December 17, 2010, pursuant to 19 CFR 351.224(c), Granoro submitted comments alleging ministerial errors, and requested that the Department correct alleged ministerial errors. No party submitted comments regarding Granoro's request to correct the alleged ministerial errors.

Scope of the Order

Imports covered by this order are shipments of certain non-egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, by Codex S.r.L., by Bioagricert S.r.L., or by Instituto per la Certificazione Etica e Ambientale. Effective July 1, 2008, gluten free pasta is also excluded from this order. *See Certain Pasta from Italy: Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation, in Part,* 74 FR 41120 (August 14, 2009). The merchandise subject to this order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Amended Final Results of Review

After analyzing Granoro's comments, we have determined, in accordance with section 751(h) of Act and 19 CFR 351.224, that the Department made a ministerial error in the *Final Results* calculation for Granoro regarding its reported transportation recovery expense (TRANSPRECU). *See Allegation of Ministerial Errors* Memorandum, dated January 28, 2011 (*Ministerial Errors Memo*). The Department finds that in the *Final Results,* we correctly stated that, consistent with our practice, we capped the transportation recovery amounts by the amount of U.S. freight expenses,

[1] On December 27, 2010, the Department published the *Final Results* of this administrative review.

incurred on subject merchandise; however, we did not implement this adjustment in the calculation of Granoro's margin program in the *Final Results*. *See Final Results* and accompanying Issues and Decision Memorandum, at page 8 (*Issues and Decision Memorandum*). Therefore, the Department finds that it inadvertently did not offset U.S. freight expense based on the amount of transportation recovery expense reported by Granoro. Accordingly, the Department's failure to make this adjustment was a clerical error. *See* section 751(h) of the Act. For these amended final results, the Department made these changes to Granoro's margin calculations as correctly explained in the final results. As a result, for the amended final results of this administrative review the average margin for Granoro has changed from 0.80 to 0.47 (*de minimis*).

In addition, Granoro alleged that the Department made a ministerial error with respect to the financial expense ratio (INTEX) used in the calculation of Granoro's antidumping duty margin. We have determined, in accordance with section 751(h) of Act and 19 CFR 351.224, that the Department did not make a ministerial error in the *Final Results* in the Department's calculation of the financial expense ratio. In the *Final Results,* the Department correctly stated that we adjusted the cost of goods sold denominator used to calculate the general and administrative (G&A) and financial expense ratios to include expenses for Granoro's testing of pasta. *See Issues and Decision Memorandum* at pages 10–11.[2] However, while this adjustment changed the G&A expense ratio, the financial expense ratio did not change as the result of the adjustment. Therefore, no correction to the SAS programming was necessary with respect to the financial expense ratio for the final results.

In accordance with section 751(h) of the Act, we are amending the final results of the antidumping duty administrative review of certain pasta from Italy for the period July 1, 2008, through June 30, 2009. As a result of correcting the ministerial errors discussed above, and in the company-specific memo listed above, the following margin applies:

Company	Final margin	Amended final margin
Granoro ..	0.80	0.47 (de minimis).

The amended final results do not differ from the final results for Garofalo.

Assessment

The Department will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries, pursuant to 19 CFR 351.212(b). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis,* we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of these amended final results of review.

The Department clarified its "automatic assessment'" regulation on May 6, 2003 (68 FR 23954). This clarification applies to POR entries of subject merchandise produced by companies examined in this review (*i.e.,* companies for which a dumping margin was calculated) where the companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the amended final results of this administrative review for all shipments of certain pasta from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date of these amended final results, as provided by section 751(a) of the Act: (1) For companies covered by this review, the cash deposit rate will be the rate listed above; (2) for previously reviewed or investigated companies other than those covered by this review, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the producer is a firm covered in this review, a prior review, or the investigation, the cash deposit rate will be 15.45 percent, the all-others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and/or countervailing duties reimbursed.

Administrative Protective Order

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These amended final results of administrative review and notice are issued and published in accordance with sections 751(a)(1) and (h), and 777(i)(1) of the Act, and 19 CFR 351.224.

Dated: January 28, 2011.

Christian Marsh,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–2614 Filed 2–4–11; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See also* Memorandum to Neal M. Halper from Ernest Z. Gziryan: Cost of Production and Constructed Value Calculation Adjustments for the Final Results—Pastificio Attilio Mastromauro—Pasta Granoro S.r.L., dated December 14, 2010 (*Final Cost Calculation Memo*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–822]

Certain Frozen Warmwater Shrimp from Thailand; Notice of Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: Effective Date: February 7, 2011.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Amended Final Results

On September 12, 2007, the Department of Commerce (the Department) published the final results of its administrative review of the antidumping duty order on certain frozen warmwater shrimp (shrimp) from Thailand. *See Certain Frozen Warmwater Shrimp from Thailand: Final Results and Final Partial Rescission of Antidumping Duty Administrative Review,* 72 FR 52065 (Sept. 12, 2007). The period of review (POR) is August 4, 2004, through January 31, 2006.

As part of this decision, the Department assigned an adverse facts available (AFA) rate to Gallant Ocean (Thailand) Co., Ltd. (Gallant Ocean), an exporter of Thai shrimp to the United States. The application of AFA was necessitated by the fact that Gallant Ocean failed to cooperate with the Department by ignoring multiple requests for information.

Following the publication of the final results, Gallant Ocean filed a lawsuit with the United States Court of International Trade (CIT) challenging the Department's final results of administrative review. *See Gallant Ocean (Thailand) Co., Ltd.* v. *United States,* Court No. 07–00360. In January 2009, the CIT found that the Department's decision was supported by substantial evidence and in accordance with law, and thus it sustained this decision in all respects. *See Gallant Ocean (Thailand) Co., Ltd* v. *United States,* 602 F. Supp. 2d 1337 (CIT 2009).

Gallant Ocean then appealed the CIT's decision before the Court of Appeals for the Federal Circuit (CAFC). On April 16, 2010, the CAFC agreed with Gallant Ocean and vacated the CIT's ruling. The CAFC ordered the CIT to remand it back to the Department "for further proceedings consistent with this opinion." *See Gallant Ocean,* 602 F.3d at 1325, corrected June 30, 2010. On October 20, 2010, the Department issued its final results of redetermination pursuant to the CAFC's ruling. *See Gallant Ocean (Thailand) Co., Ltd* v. *United States,* Final Results of Redetermination Pursuant to Court Remand (Oct. 20, 2010).

The United States and Gallant Ocean have now entered into an agreement to settle this dispute. Pursuant to the terms of the agreement between the United States and Gallant Ocean, we will liquidate Gallant Ocean's entries during the POR at the 12.55 percent rate agreed to by the parties.

We are issuing this determination and publishing these amended final results and notice in accordance with 19 U.S.C. 1516a(e).

Dated: January 31, 2011.

Paul Piquado,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 2011–2615 Filed 2–4–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–912]

Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Notice of Extension of Time Limit for the Final Results of the 2008–2009 Administrative Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 7, 2011.

FOR FURTHER INFORMATION CONTACT: Erin Begnal or Raquel Silva, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–1442 or (202) 482–6475, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 26, 2009, the Department of Commerce ("Department") initiated the administrative review of the antidumping duty order on certain new pneumatic off-the-road tires ("OTR tires") from the People's Republic of China ("PRC") for the period February 20, 2008, through August 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part,* 74 FR 54956 (October 26, 2009). On October 19, 2010, the Department published its preliminary results of the administrative review of the antidumping order on OTR tires from the PRC. *See Certain New Pneumatic Off-the-Road Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 75 FR 64259 (October 19, 2010). The final results are currently due no later than February 16, 2011.

Extension of Time Limit for Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the final results in an administrative review within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time period to a maximum of 180 days.

We determine that it is not practicable to complete the final results of this review within the current deadline because the Department continues to require additional time to analyze issues raised in recent surrogate value submissions, verification exhibits, and case briefs and rebuttals. Therefore, we are extending the time limit for completion of the final results by 30 days, in accordance with section 751(a)(3)(A) of the Act. An extension of 30 days from the current deadline of February 16, 2011, would result in a new deadline of March 18, 2011. As such, the final results are now due no later than March 18, 2011.

This notice is published pursuant to sections 751(a) and 777(i) of the Act.

Dated: January 31, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–2617 Filed 2–4–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–819]

Certain Pasta From Italy: Extension of Time Limit for the Preliminary Results of the Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* February 7, 2011.

FOR FURTHER INFORMATION CONTACT: Scott Holland or Chris Siepmann, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1279 and (202) 482–7958, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2010, the U.S. Department of Commerce ("Department") published a notice of initiation of administrative review of the countervailing duty order on certain pasta from Italy, covering the period January 1, 2009, through December 31, 2009. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Deferral of Initiation of Administrative Review,* 75 FR 53274 (August 31, 2010). The preliminary results of this administrative review are currently due no later than April 2, 2011.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department to issue the preliminary results of an administrative review within 245 days after the last day of the anniversary month of a countervailing duty order for which a review is requested and issue the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Extension of Time Limit for Preliminary Results

The Department requires additional time to review and analyze submitted information and to issue supplemental questionnaires. Therefore, it is not practicable to complete the preliminary results of this review within the original time limit, and the Department is extending the time limit for completion of the preliminary results by 120 days. The preliminary results will now be due no later than August 1, 2011, the first business day following 120 days from the current deadline. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as Amended,* 70 FR 24533 (May 10, 2005). The final results continue to be due 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: January 31, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–2636 Filed 2–4–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department of Education (Department) gives notice that on September 28, 2010, an arbitration panel rendered a decision in the matter of *Ron Armstrong* v. *Ohio Rehabilitation Commission, Bureau of Services for the Blind and Visually Impaired, Case no. R–S/08–4.* This panel was convened by the Department under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by the petitioner, Ron Armstrong.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 5022, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7374. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

Individuals with disabilities may obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Ron Armstrong (Complainant) alleged violations by the Ohio Rehabilitation Services Commission, Bureau of Services for the Blind and Visually Impaired, the State licensing agency (SLA), under the Act and implementing regulations in 34 CFR part 395. Specifically, Complainant alleged that the SLA improperly administered the Ohio Randolph-Sheppard Vending Facility Program in violation of the Act, implementing regulations under the Act, and State rules and regulations. Complainant further alleged that the SLA's selection committee denied him an opportunity to manage Vending Facility 495 by inappropriately applying selection criteria that led to another candidate being selected to manage Vending Facility 495.

Prior to Complainant applying for Vending Facility 495 in 2006, he had managed the facility part-time for four years. Complainant requested a State fair hearing on the SLA's decision to award Vending Facility 495 to another candidate. A State fair hearing on this matter was held. On December 8, 2008, the hearing officer issued a decision denying Complainant's grievance. On January 6, 2009, the SLA adopted the hearing officer's decision as final agency action. Complainant sought review of the SLA's final agency by a Federal arbitration panel.

According to the arbitration panel, the issues to be resolved were: (1) Whether the selection committee violated the Ohio Administrative Code (OAC) when it applied the 2006 labor goal to determine a labor percentage for 2005 for both Complainant and the other candidate when there did not exist a labor goal in 2005 and the 2006 rule required application of labor percentages for two years; (2) Whether the selection committee considered all of the documents in both the Complainant's and the other candidate's vending operator files as required by the OAC; (3) Whether the selection committee invited the grantor (building representative) to participate on the selection committee as required by the OAC; and (4) What the remedy should be if the provisions of the Act or any of the implementing regulations and state rules and regulations were violated.

Arbitration Panel Decision

After hearing testimony and reviewing all of the evidence, the panel issued its ruling. On issue number one, the panel found that the selection committee convened in 2006 to select a manager for Vending Facility 495 was required to determine each candidate's labor percentage for the previous two years.

However, the panel concluded that the problem with implementation of the 2006 rule was that neither the Complainant nor the other candidate had a labor percentage goal for 2005. In order to remedy the two year requirement, the selection committee decided to apply the Complainant's and the other candidate's labor goals in 2006 to their vending facilities in 2005, thus providing a labor percentage for the two-year period.

The arbitration panel found that this action of the selection committee was not patently unfair or an abuse of discretion and thus was not in violation of state rules and regulations or the Act and implementing regulations.

Regarding issue number two, the panel determined that the record reflected complaints about the successful candidate's performance at prior facilities. However, the evidence heard by the panel did not indicate that the SLA or any of its staff arbitrarily removed documentation from the successful candidate's file or failed to submit records in his vending operator file to the selection committee. Thus, based upon testimony of the selection committee members that they were aware of the successful candidate's problems at prior facilities, the arbitration panel ruled that the successful candidate's problems occurred several years earlier and his lack of problems and his improvement over recent years merited the level of scoring that he received from the selection committee.

Concerning issue number three, the panel found that there was no dispute that the grantor of Vending Facility 495 did not serve on the selection committee. Based on the evidence heard by the panel, the grantor was contacted via e-mail by the SLA and indicated that he believed he was invited to serve on the selection committee, but the grantor did not recall why he did not attend. The Complainant interpreted the grantor's lack of attendance to mean that the grantor was not invited by the SLA to participate on the selection committee in violation of the OAC.

However, the panel in considering the hearing record as a whole determined that the Complainant did not meet his minimum burden of proof on this issue.

Finally, regarding issue number four, the panel found no violations of the Act, implementing regulations under the Act, or the state rules and regulations. Thus, the panel denied Complainant's grievance.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

Electronic Access to This Document: You can view this document, as well as all other Department of Education documents 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: February 2, 2011.

Alexa Posny,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2011–2638 Filed 2–4–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Coal Council; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council (NCC) Coal Policy Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, February 22, 2011. 10 a.m. to 2 p.m.

ADDRESSES: Hilton Hotel at the Ballpark, One South Broadway, St. Louis, Missouri 63102.

FOR FURTHER INFORMATION CONTACT: Michael J. Ducker, U.S. Department of Energy; 4G–036/Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 202–586–7810.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide a review by the Committee of the final draft of the current study underway by the Council on the deployment of carbon capture and storage technologies.

Agenda: Review of the previously described draft report.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any potential items on the agenda, you should contact Michael J. Ducker, 202–586–7810 or *Michael.Ducker@hq.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The NCC will prepare meeting minutes within 45 days of the meeting. The minutes will be posted on the NCC Web site at *http://www.nationalcoalcouncil.org/*.

Issued at Washington, DC, on February 1, 2011.

LaTanya R. Butler,

Acting Deputy Committee Management Officer.

[FR Doc. 2011–2587 Filed 2–4–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Efficiency and Renewable Energy Advisory Committee (ERAC)

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

ACTION: Notice of open meeting.

SUMMARY: The purpose of the ERAC is to provide advice and recommendations to the Secretary of Energy on the research, development, demonstration, and deployment priorities within the field of energy efficiency and renewable energy. The Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770, requires that agencies publish notice of an advisory committee meeting in the **Federal Register.**

DATES: Wednesday, March 2, 2011, 9 a.m.–3 p.m.

ADDRESSES: Capitol Skyline Hotel, 10 I Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *erac@ee.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and recommendations to the

Secretary of Energy on the research, development, demonstration, and deployment priorities within the field of energy efficiency and renewable energy.

Tentative Agenda: (Subject to change; updates will be posted on *http://www.erac.energy.gov*):

- EERE Strategic Overview and Discussion
- ERAC Subcommittee Discussion

Public Participation: Members of the public are welcome to observe the business of the meeting of ERAC and to make oral statements during the specified period for public comment. The public comment period will take place between 2:15 p.m. through 2:30 p.m. during the day of the meeting (Wednesday, March 2, 2011). To attend the meeting and/or to make oral statements regarding any of the items on the agenda, e-mail *erac@ee.doe.gov* at least five business days before the meeting, no later than Wednesday, February 22, 2011. In the e-mail, please indicate your name, organization (if appropriate), citizenship, and contact information.

Members of the public will be heard in the order in which they sign up for the Public Comment Period. Oral comments should be limited to two minutes in length. Reasonable provision will be made to include the scheduled oral statements on the agenda. The chair of the committee will make every effort to hear the views of all interested parties and to facilitate the orderly conduct of business.

Participation in the meeting is not a prerequisite for submission of written comments. ERAC invites written comments from all interested parties. If you would like to file a written statement with the committee, you may do so either by submitting a hard or electronic copy before or after the meeting. Electronic copy of written statements should be e-mailed to *erac@ee.doe.gov*.

Minutes: The minutes of the meeting will be available for public review at *http://www.erac.energy.gov.*

Issued in Washington, DC, on February 2, 2011.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 2011–2588 Filed 2–4–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

January 31, 2011.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1731–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Oneok Energy Services Company, L.P. to BG Energy Merchants, LLC., Negotiated Rate Agreement to be effective 2/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5165.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 09, 2011.

Docket Numbers: RP11–1732–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: J–W 34689 to Q–West Capacity Release Negative Rate Agreement to be effective 2/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5166.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 09, 2011.

Docket Numbers: RP11–1733–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: JW 34690 to Q–West Capacity Release Negative Rate Agreement to be effective 2/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5171.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 09, 2011.

Docket Numbers: RP11–1734–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: Natural Gas Pipeline Company of America LLC submits tariff filing per 154.204: Brazos' Non-Conforming Agreement to be effective 3/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5206.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 09, 2011.

Docket Numbers: RP11–1735–000.
Applicants: Equitrans, L.P.
Description: Equitrans, L.P. submits tariff filing per 154.204: Big Sandy Pipeline Semi-Annual Retainage Rate Filing to be effective 3/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5222.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 09, 2011.

Docket Numbers: RP11–1736–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.203: Pro Forma GTC Section 18 Filing to be effective N/A.
Filed Date: 01/28/2011.
Accession Number: 20110128–5224.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 09, 2011.

Docket Numbers: RP11–1737–000.
Applicants: Golden Pass Pipeline LLC.
Description: Golden Pass Pipeline LLC submits tariff filing per 154.203: CP11–34–000 Amended Initial Rates to be effective 3/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5245.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 09, 2011.

Docket Numbers: RP11–1738–000.
Applicants: El Paso Natural Gas Company.
Description: El Paso Natural Gas Company submits tariff filing per 154.204: Capacity Release Agreement Update to be effective 3/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5266.
Comment Date: 5 p.m. Eastern Time on Wednesday, February 09, 2011.

Docket Numbers: RP11–1739–000.
Applicants: Gas Transmission Northwest Corporation.
Description: Gas Transmission Northwest Corporation submits tariff filing per 154.203: Medford Lateral Annual Report Year Ending 10–31–10 to be effective N/A.
Filed Date: 01/31/2011.
Accession Number: 20110131–5037.
Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: RP11–1740–000
Applicants: Kinder Morgan Louisiana Pipeline LLC
Description: Penalty Revenue Crediting Report of Kinder Morgan Louisiana Pipeline LLC.
Filed Date: 01/31/2011.
Accession Number: 20110131–5047.
Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: RP11–1741–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: Algonquin Gas Transmission, LLC submits tariff filing per 154.204: Negotiated Rate Filing 2011 02–01—Hess to be effective 2/1/2011.
Filed Date: 01/31/2011.
Accession Number: 20110131–5053.
Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Docket Numbers: RP11–1742–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits tariff filing per 154.204: Enerquest to Sequent Capacity Release Negotiated Rate Agreement Filing to be effective 2/1/2011.

Filed Date: 01/31/2011.

Accession Number: 20110131–5062.

Comment Date: 5 p.m. Eastern Time on Monday, February 14, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2626 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 2

January 24, 2011.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1565–001.

Applicants: Discovery Gas Transmission LLC.

Description: Discovery Gas Transmission LLC submits tariff filing per 154.203: Report of Negotiation Progress and Agreement to be effective 1/1/2011.

Filed Date: 01/21/2011.

Accession Number: 20110121–5035.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: RP10–779–004.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits tariff filing per 154.203: DTI—Baseline Compliance All Volumes to be effective 5/28/2010.

Filed Date: 01/24/2011.

Accession Number: 20110124–5075.

Comment Date: 5 p.m. Eastern Time on Monday, February 7, 2011.

Docket Numbers: RP10–779–005.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits tariff filing per 154.203: DTI—Baseline Compliance Subsequent Filing 1 to be effective 7/1/2010.

Filed Date: 01/24/2011.

Accession Number: 20110124–5077

Comment Date: 5 p.m. Eastern Time on Monday, February 7, 2011.

Docket Numbers: RP10–779–006.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits tariff filing per 154.203: DTI—Baseline Compliance Subsequent Filing 2 to be effective 8/8/2010.

Filed Date: 01/24/2011.

Accession Number: 20110124–5078.

Comment Date: 5 p.m. Eastern Time on Monday, February 7, 2011.

Docket Numbers: RP10–779–007.

Applicants: Dominion Transmission, Inc.

Description: Dominion Transmission, Inc. submits tariff filing per 154.203: DTI—Baseline Compliance Subsequent Filing 3 to be effective 12/31/2010.

Filed Date: 01/24/2011.

Accession Number: 20110124–5079.

Comment Date: 5 p.m. Eastern Time on Monday, February 7, 2011.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before 5 p.m. Eastern time on the specified comment date. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2628 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

January 28, 2011.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG11–50–000.

Applicants: Cambria CoGen Company.

Description: Notice of Self-Certification of EWG Status—Cambria CoGen Company.

Filed Date: 01/28/2011.

Accession Number: 20110128–5033.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER06–275–004.
Applicants: Northeast Utilities Service Company.
Description: Northeast Utilities Service Company Annual CWIP Filing for Southwest Connecticut Projects.
Filed Date: 01/28/2011.
Accession Number: 20110128–5161.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER10–1107–001.
Applicants: Pacific Gas and Electric Company.
Description: Notice of Pacific Gas and Electric Company's Non-Material Change in Status.
Filed Date: 01/28/2011.
Accession Number: 20110128–5213.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER10–1891–001; ER10–1896–001.
Applicants: Citigroup Energy Canada ULC, Citigroup Energy Inc.
Description: Notice of Non-Materical Change in Status of Citigroup Energy Inc. and Citigroup Energy Canada ULC.
Filed Date: 01/28/2011.
Accession Number: 20110128–5157.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2209–001.
Applicants: Alta Wind II, LLC.
Description: Notice of Non-Material Change in Status of Alta Wind II, LLC.
Filed Date: 01/28/2011.
Accession Number: 20110128–5152.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2764–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2065 Westar Energy, Inc. NITSA and NOA to be effective 1/1/2011.
Filed Date: 01/27/2011.
Accession Number: 20110127–5155.
Comment Date: 5 p.m. Eastern Time on Thursday, February 17, 2011.

Docket Numbers: ER11–2765–000.
Applicants: Elk Wind Energy LLC.
Description: Elk Wind Energy LLC submits tariff filing per 35.12: Application for Market-Based Rate Authorization to be effective 3/29/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5035.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2766–000.
Applicants: Duke Energy Carolinas, LLC.
Description: Duke Energy Carolinas, LLC submits tariff filing per 35.13(a)(2)(iii: NCEMC and BREC NITSA Amendments to be effective 1/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5051.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2767–000.
Applicants: Southwestern Public Service Company.
Description: Southwestern Public Service Company submits tariff filing per 35.13(a)(2)(iii: 2011_1_28_SPS–GSEC–DSEC Sub #1 CA to be effective 1/29/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5126.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2768–000.
Applicants: GenOn Wholesale Generation, LP.
Description: GenOn Wholesale Generation, LP submits tariff filing per 35.1: Notice of Succession to be effective 1/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5127.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2769–000.
Applicants: RRI Energy Services, LLC.
Description: RRI Energy Services, LLC submits tariff filing per 35.1: Notice of Succession to be effective 1/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5128.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2770–000.
Applicants: GenOn Wholesale Generation, LP.
Description: GenOn Wholesale Generation, LP submits tariff filing per 35.13(a)(2)(iii: Notice of Succession to be effective 1/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5148.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2771–000.
Applicants: Cleco Power LLC.
Description: Cleco Power LLC submits tariff filing per 35.1: RS 35–Cleco Power/Entergy O&M to be effective 1/28/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5151.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2772–000.
Applicants: GenOn Wholesale Generation, LP.
Description: GenOn Wholesale Generation, LP submits tariff filing per 35.13(a)(2)(iii: Notice of Succession to be effective 1/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5153.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2773–000.
Applicants: Cleco Power LLC.
Description: Cleco Power LLC submits tariff filing per 35.12: RS 36–Cleco Power/Entergy JOA to be effective 3/31/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5156.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2774–000.
Applicants: Virginia Electric and Power Company.
Description: Request of Virginia Electric and Power Company and Its Market-Regulated Power Sales Affiliates For Waivers of Certain Affiliate Restrictions Requirements.
Filed Date: 01/28/2011.
Accession Number: 20110128–5159.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2775–000.
Applicants: Societe Generale Energy Corp.
Description: Societe Generale Energy Corp. submits tariff filing per 35.13(a)(2)(iii: SocGen Sucession Filing to be effective 1/13/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5162.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2776–000.
Applicants: Alabama Power Company.
Description: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: SWE—Leaf River NITSA Filing to be effective 1/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5163.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2777–000.
Applicants: Midwest Independent Transmission System, Ameren Illinois Company.
Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Ameren-IMEA WDS SA1951 2–1–11 to be effective 2/1/2011.
Filed Date: 01/28/2011.
Accession Number: 20110128–5164.
Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2778–000.
Applicants: Midwest Independent Transmission System, Ameren Illinois Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Ameren-Mt. Carmel WDS SA 1958 2–1–11 to be effective 2/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5167.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2779–000.

Applicants: Midwest Independent Transmission System, Ameren Illinois Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Ameren-Norris Electric WDS SA1975 2–1–11 to be effective 2/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5172.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2780–000.

Applicants: Safe Harbor Water Power Corporation.

Description: Safe Harbor Water Power Corporation submits tariff filing per 35.37: Safe Harbor Updated Market Power Analysis, Order No. 697–A Compl, Chg of Status to be effective 1/28/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5174.

Comment Date: 5 p.m. Eastern Time on Tuesday, March 29, 2011.

Docket Numbers: ER11–2781–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2144 East Texas Electric Cooperative, Inc. Market Participant Service Agreement to be effective 1/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5175.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2782–000.

Applicants: Midwest Independent Transmission System, Ameren Illinois Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Ameren-Prairie Power WDS SA2001 2–1–11 to be effective 2/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5176.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2783–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2154 Midwest Energy, Inc. NITSA and NOA to be effective 1/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5179.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2784–000.

Applicants: GenOn Wholesale Generation, LP.

Description: GenOn Wholesale Generation, LP submits tariff filing per 35.13(a)(2)(iii: Notice of Succession-MBR to be effective 1/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5181.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2785–000.

Applicants: GenOn Wholesale Generation, LP.

Description: GenOn Wholesale Generation, LP submits tariff filing per 35.13(a)(2)(iii: Notice of Succession to be effective 1/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5188.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2786–000.

Applicants: Midwest Independent Transmission System, Ameren Illinois Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Ameren-Southern Illinois WDS SA2010 2–1–11 to be effective 2/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5192.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2787–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits tariff filing per 35.13(a)(2)(iii: 2155 Sunflower Electric Power Corporation NITSA and NOA to be effective 1/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5195.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2788–000.

Applicants: Midwest Independent Transmission System, Ameren Illinois Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Ameren-Southwestern Electric WDS SA2006 2–1–11 to be effective 2/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5196.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2789–000.

Applicants: Midwest Independent Transmission System, Ameren Illinois Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Ameren-Wabash Valley SA1970 2–1–11 to be effective 2/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5197.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2790–000.

Applicants: Midwest Independent Transmission System, Ameren Illinois Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Ameren-Hoosier WDS SA2005 2–1–11 to be effective 2/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5198.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2791–000.

Applicants: Midwest Independent Transmission System, Ameren Illinois Company.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: Ameren-Newton WDS SA2003 4–1–11 to be effective 4/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5202.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2792–000.

Applicants: Alabama Power Company.

Description: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: SMEPA NITSA Filing to be effective 4/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5204.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2793–000.

Applicants: Allegheny Energy Supply Company, LLC.

Description: Allegheny Energy Supply Company, LLC submits tariff filing per 35: Allegheny Energy Compliance Filing to be effective 1/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5217.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Docket Numbers: ER11–2794–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 1–28–11 Reserve Procurement Enhancement to be effective 4/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5241.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Take notice that the Commission received the following land acquisition reports:

Docket Numbers: LA10–4–000.

Applicants: Blackstone Wind Farm LLC; Blackstone Wind Farm II LLC; High Trail Wind Farm LLC; Meadow Lake Wind Farm LLC; Meadow Lake Wind Farm II LLC; Meadow Lake Wind Farm III LLC; Meadow Lake Wind Farm IV LLC; Old Trail Wind Farm, LLC.

Description: Notice of non-material change in status of Blackstone Wind Farm LLC.

Filed Date: 01/27/2011.

Accession Number: 20110127–5166.

Comment Date: 5 p.m. Eastern Time on Thursday, February 17, 2011.

Docket Numbers: LA10–4–000.

Applicants: East Coast Power Linden Holding, LLC; Cogen Technologies Linden Venture, L.P.; Fox Energy Company LLC; Birchwood Power Partners, L.P.; Shady Hills Power Company, LLC; EFS Parline Holdings, LLC and Inland Empire Energy Center, LLC.

Description: 4thQ Site Acquisition Report of The GE Companies.

Filed Date: 01/28/2011.

Accession Number: 20110128–5155.

Comment Date: 5 p.m. Eastern Time on Friday, February 18, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2630 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings No. 1

January 24, 2011.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1714–000.

Applicants: Transcontinental Gas Pipe Line Company.

Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.204: Revisions to GT&C and Rate Schedule Pooling to be effective 3/1/2011.

Filed Date: 01/20/2011.

Accession Number: 20110120–5130.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 1, 2011.

Docket Numbers: RP11–1715–000.

Applicants: Questar Pipeline Company.

Description: Questar Pipeline Company submits tariff filing per 154.204: FERC Audit-Recommended Filing: Working Gas Loss to be effective 2/21/2011.

Filed Date: 01/20/2011.

Accession Number: 20110120–5134.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 1, 2011.

Docket Numbers: RP11–1716–000.

Applicants: Black Marlin Pipeline Company.

Description: Petition for Extension of Temporary Exemptions from Tariff Provisions of Black Marlin Pipeline Company.

Filed Date: 01/20/2011.

Accession Number: 20110120–5184.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 1, 2011.

Docket Numbers: RP11–1717–000.

Applicants: Texas Eastern Transmission, LP.

Description: Texas Eastern Transmission, LP submits tariff filing per 154.204: TETLP Gas Quality Docket RP10–30 Compliance Filing to be effective 3/1/2011.

Filed Date: 01/21/2011.

Accession Number: 20110121–5021.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: RP11–1718–000.

Applicants: Centra Pipelines Minnesota Inc.

Description: Petition for Approval of Settlement of Centra Pipelines Minnesota Inc.

Filed Date: 01/21/2011.

Accession Number: 20110121–5084.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 2, 2011.

Docket Numbers: RP11–1719–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits tariff filing per 154.204: Incorporation of Previously Accepted Tariff Provisions to be effective 2/24/2011.

Filed Date: 01/24/2011.

Accession Number: 20110124–5112.

Comment Date: 5 p.m. Eastern Time on Monday, February 7, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be

listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2629 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

January 28, 2011.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP11–1719–000.

Applicants: El Paso Natural Gas Company.

Description: El Paso Natural Gas Company submits tariff filing per 154.204: Incorporation of Previously Accepted Tariff Provisions to be effective 2/24/2011.

Filed Date: 01/24/2011.

Accession Number: 20110124–5112.

Comment Date: 5 p.m. Eastern Time on Monday, February 07, 2011.

Docket Numbers: RP11–1720–000.

Applicants: Northern Natural Gas Company.

Description: Petition of Northern Natural Gas Company For a Limited Waiver of Tariff Provisions.

Filed Date: 01/24/2011.

Accession Number: 20110124–5165.

Comment Date: 5 p.m. Eastern Time on Monday, February 07, 2011.

Docket Numbers: RP11–1721–000.

Applicants: Midcontinent Express Pipeline LLC.

Description: Penalty Revenue Crediting Report of Midcontinent Express Pipeline LLC.

Filed Date: 01/25/2011.

Accession Number: 20110125–5170.

Comment Date: 5 p.m. Eastern Time on Monday, February 07, 2011.

Docket Numbers: RP11–1722–000.

Applicants: Fayetteville Express Pipeline LLC.

Description: Fayetteville Express Pipeline LLC submits tariff filing per 154.403(d)(2): FEP Out of Cycle Fuel Reimbursement Percentage Adjustment to be effective 3/1/2011.

Filed Date: 01/26/2011.

Accession Number: 20110126–5169.

Comment Date: 5 p.m. Eastern Time on Monday, February 07, 2011.

Docket Numbers: RP11–1723–000.

Applicants: Great Lakes Gas Transmission Limited Partnership.

Description: Great Lakes Gas Transmission Limited Partnership submits tariff filing per 154.204: Allocation Methodology to be effective 3/1/2011.

Filed Date: 01/26/2011.

Accession Number: 20110126–5288.

Comment Date: 5 p.m. Eastern Time on Monday, February 07, 2011.

Docket Numbers: RP11–1724–000.

Applicants: Williston Basin Interstate Pipeline Company.

Description: Williston Basin Interstate Pipeline Company submits tariff filing per 154.204: Non-Conforming Service Agreements to be effective 2/25/2011.

Filed Date: 01/26/2011.

Accession Number: 20110126–5302.

Comment Date: 5 p.m. Eastern Time on Monday, February 07, 2011.

Docket Numbers: RP11–1725–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Transcontinental Gas Pipe Line Company, LLC submits tariff filing per 154.403: S–2 Tracker Filing to be effective 2/1/2011.

Filed Date: 01/27/2011.

Accession Number: 20110127–5003.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 08, 2011.

Docket Numbers: RP11–1726–000.

Applicants: Northern Natural Gas Company.

Description: Northern Natural Gas Company submits tariff filing per 154.204: 20110110 Miscellaneous Tariff Filing to be effective 2/27/2011.

Filed Date: 01/27/2011.

Accession Number: 20110127–5056.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 08, 2011.

Docket Numbers: RP11–1727–000.

Applicants: Eastern Shore Natural Gas Company.

Description: Eastern Shore Natural Gas Company submits tariff filing per 154.204: Pre-Certification Cost Surcharge of FERC Gas Tariff to be effective 3/1/2011.

Filed Date: 01/27/2011.

Accession Number: 20110127–5139.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 08, 2011.

Docket Numbers: RP11–1728–000.

Applicants: Midwestern Gas Transmission Company.

Description: Midwestern Gas Transmission Company submits tariff filing per 154.204: Non-Conforming Agreement—Chevron 1–26–11 to be effective 2/1/2011.

Filed Date: 01/27/2011.

Accession Number: 20110127–5162.

Comment Date: 5 p.m. Eastern Time on Tuesday, February 08, 2011.

Docket Numbers: RP11–1729–000.

Applicants: Trunkline Gas Company, LLC.

Description: Trunkline Gas Company, LLC submits tariff filing per 154.204: Negotiated Rates Filing-5 to be effective 2/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5048.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 09, 2011.

Docket Numbers: RP11–1730–000.

Applicants: Southern LNG Company, L.L.C.

Description: Southern LNG Company, L.L.C. submits tariff filing per 154.204: Dredging Surcharge Cost Adjustment to be effective 3/1/2011.

Filed Date: 01/28/2011.

Accession Number: 20110128–5050.

Comment Date: 5 p.m. Eastern Time on Wednesday, February 09, 2011.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and

interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2627 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

January 28, 2011.

	Project No.
FFP Missouri 13, LLC	13763–000
Grays Hydro, LLC	13772–000

On January 27, 2011, the Commission held a drawing to determine priority between two competing preliminary permit applications with identical filing times. In the event that the Commission concludes that neither of the applicants' plans is better adapted than the other to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. FFP Missouri 13, LLC—Project No. 13763–000
2. Grays Hydro, LLC—Project No. 13772–000

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2619 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13745–000; Project No. 13758–000; Project No. 13767–000]

Lock Hydro Friends Fund XLIII; FFP Missouri 14, LLC; Solia 4 Hydroelectric, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

January 28, 2011.

On January 27, 2011, the Commission held a drawing to determine priority between three competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Solia 4 Hydroelectric, LLC—Project No. 13767–000
2. FFP Missouri 14, LLC—Project No. 13758–000
3. Lock Hydro Friends Fund XLIII—Project No. 13745–000

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2622 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

January 28, 2011.

	Project No.
Lock+ Hydro Friends Fund XXXIX	13740–000
FFP Missouri 3, LLC	13749–000
Allegheny 3 Hydro, LLC	13775–000
Three Rivers Hydro, LLC	13781–000

On January 27, 2011, the Commission held a drawing to determine priority between four competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Lock+ Hydro Friends Fund XXXIX—Project No. 13740–000
2. Allegheny 3 Hydro, LLC—Project No. 13775–000
3. FFP Missouri 3, LLC—Project No. 13749–000
4. Three Rivers Hydro, LLC—Project No. 13781–000

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2624 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13746–000; Project No. 13750–000; Project No. 13776–000; Project No. 13782–000]

Lock+ Hydro Friends Fund XL; FFP Missouri 4, LLC; Allegheny 4 Hydro, LLC; Three Rivers Hydro, LLC; Notice Announcing Filing Priority for Preliminary Permit Applications

January 28, 2011.

On January 27, 2011, the Commission held a drawing to determine priority between four competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Three Rivers Hydro, LLC—Project No. 13782–000
2. FFP Missouri 4, LLC—Project No. 13750–000
3. Allegheny 4 Hydro, LLC—Project No. 13776–000
4. Lock+ Hydro Friends Fund XL—Project No. 13746–000

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2621 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

January 28, 2011.

	Project No.
Lock Hydro Friends Fund XXXV	13735–000
FFP Missouri 7, LLC	13756–000
Dashields Hydro, LLC	13779–000

On January 27, 2011, the Commission held a drawing to determine priority between three competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Dashields Hydro, LLC—Project No. 13779–000
2. Lock Hydro Friends Fund XXXV—Project No. 13735–000
3. FFP Missouri 7, LLC—Project No. 13756–000

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2625 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

January 28, 2011.

	Project No.
Lock Hydro Friends Fund XLI	13736–000
Allegheny 7 Hydro, LLC	13777–000

On January 27, 2011, the Commission held a drawing to determine priority between two competing preliminary permit applications with identical filing times. In the event that the Commission concludes that neither of the applicants' plans is better adapted than the other to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. Allegheny 7 Hydro, LLC—Project No. 13777–000
2. Lock Hydro Friends Fund XLI—Project No. 13736–000

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2623 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Announcing Filing Priority for Preliminary Permit Applications

January 28, 2011.

	Project No.
FFP Missouri 15, LLC	13762–000
Morgantown Hydro, LLC	13773–000
Three Rivers Hydro, LLC	13784–000

On January 27, 2011, the Commission held a drawing to determine priority between three competing preliminary permit applications with identical filing times. In the event that the Commission concludes that none of the applicants' plans are better adapted than the others to develop, conserve, and utilize in the public interest the water resources of the region at issue, the priority established by this drawing will serve as the tiebreaker. Based on the drawing, the order of priority is as follows:

1. FFP Missouri 15, LLC—Project No. 13762–000
2. Three Rivers Hydro, LLC—Project No. 13784–000
3. Morgantown Hydro, LLC—Project No. 13773–000

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2620 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2754–000]

AP Gas & Electric (TX), LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 31, 2011.

This is a supplemental notice in the above-referenced proceeding of AP Gas & Electric (TX), LLC'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 February 22, 2011.

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 Street, NE., Washington, DC 20426.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2618 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–2765–000]

Elk Wind Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 31, 2011.

This is a supplemental notice in the above-referenced proceeding of Elk Wind Energy, LLC'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 February 22, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

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Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2632 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

January 31, 2011.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt:

Docket No.	File date	Presenter or requester
1. P–2713–000	1–20–11	John Baummer [1]

[1] Telephone record.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–2631 Filed 2–4–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9262–4]

Notice of a Regional Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA) to the City of Seattle (the City), WA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator of EPA Region 10 is hereby granting a waiver of the Buy American requirements of ARRA Section 1605(a) under the authority of Section 1605(b)(2) [manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality] to the City of Seattle (the City) for the purchase of semi-rigid protection boards (15,600 sheets each measuring 39½″ × 80″) manufactured in Surrey, British Columbia, for a hot applied membrane waterproofing system for a drinking water reservoir cover. This is a project specific waiver and only applies to the use of the specified products for the ARRA project being proposed. Any other ARRA recipient that wishes to use the same product must apply for a

separate waiver based on project specific circumstances. The waiver applicant states that the project requires semi-rigid protection boards because the Maple Leaf Reservoir is being covered by a concrete roof as part of the City's reservoir burying program. The City's Parks Department will be constructing a park on the roof of the reservoir. A waterproofing system will provide a watertight seal on the reservoir roof concrete deck. Semi-rigid rubberized asphaltic fiberglass reinforced protection board will be incorporated as part of the roof waterproofing system to provide a barrier over the waterproofing membrane to protect the membrane against damage from the backfill associated with the construction of the park, and from the pedestrian and vehicular activity associated with the use and maintenance of the park.

The Regional Administrator is making this determination based on the review and recommendations of the Drinking Water Unit. The City has provided sufficient documentation to support their request.

DATES: *Effective Date:* January 31, 2011.

FOR FURTHER INFORMATION CONTACT: Johnny Clark, DWSRF ARRA Program Management Analyst, Drinking Water Unit, Office of Water & Watersheds (OWW), (206) 553–0082, U.S. EPA Region 10 (OWW–136), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.

SUPPLEMENTARY INFORMATION: In accordance with ARRA Section 1605(c), the EPA hereby provides notice that it is granting a project waiver of the requirements of Section 1605(a) of Public Law 111–5, Buy American requirements, to the City for the semi-rigid protection boards (15,600 sheets each measuring 39½″ × 80″) manufactured in Surrey, British Columbia, for a hot applied membrane waterproofing system for a drinking water reservoir cover. The applicant indicates that semi-rigid protection board is required on the roof of the drinking water supply reservoir to obtain a twenty (20) year warranty from the waterproofing manufacturer. Semi-rigid protection board is currently being used at three (3) other reservoirs operated by the City. Based upon project specifications, there are no known U.S. manufactures that manufacture comparable products. The ARRA funded project involves water system improvements at the Maple Leaf Reservoir. Enhanced moisture protection is being incorporated into the reinforced hot-applied waterproofing system to allow for pedestrian use and vehicular activity. As part of the reservoir burying program, the City's Parks Department will be constructing a park on the roof of the reservoir. The City currently has three other reservoirs which also have the semi-rigid protection board installed. The City's project specification calls for the reinforced hot applied waterproofing system. In order to provide equivalent waterproofing protection similar to the three other reservoirs within the City, the City changed the project specifications in order to ensure consistency of their reservoir burying program requirements and to ensure the semi-rigid protection board's twenty (20) year warranty. An inquiry by EPA's national contractor (Cadmus) confirmed there are no known domestic manufacturers of comparable semi-rigid protection board that meet all aspects of the project specification, which is supported by the available information. Information received from the manufacturer on behalf of the City indicated that an attempt to locate a domestic manufacturer was done so unsuccessfully. The manufacturer added this product to their inventory and product line some years ago. According to the manufacturer, their two domestic suppliers of protection materials had indicated that they were unable to manufacture a similar/like product and nor did either supplier have knowledge of a similar/like product manufactured in the U.S. Based on available information, it is unlikely that other semi-rigid protection boards would function within the requirement of the project specifications.

EPA has also evaluated the City's request to determine if its submission is considered late or if it could be considered as if it was timely filed, as per the OMB Guidance at CFR 176.120. EPA will generally regard waiver requests with respect to components that were specified in the bid solicitation or in a general/primary construction contact as "late" if submitted after the contract date. However, EPA could also determine that a request be evaluated as timely, though made after the date that the contract was signed, if the need for a waiver was not reasonably foreseeable. If the need for a waiver is reasonably foreseeable, then EPA could still apply discretion in these late cases as per the OMB Guidance, which says "the award official may deny the request." For those waiver requests that do not have a reasonably unforeseeable basis for lateness, but for which the waiver basis is valid and there is no apparent gain by the ARRA recipient or loss on behalf of the government, then EPA will still consider granting a waiver.

In this case, there are no U.S. manufacturers that meet the City's project specifications for the semi-rigid protection boards. The waiver request was submitted after the contract date due to a design change. The original project specifications for the protection course were developed with a standard design, 80- to 90-mil-(2.0- to 2.3-mm) thickness, fiberglass reinforced asphalt or modified bituminous sheet. The design change and clarification of May 12, 2010 resulted in an upgrade to the existing protective course requirements, in order to provide extra reinforcement and increased puncture resistance, similar to the three other reservoir covers previously installed within the City. The design change was necessary due to the project's size and complexity. The design change also increases performance of the protection board and the potential life expectancy of the project resulting in a twenty year warranty program. The design change required the upgrade of the protection course to a semi-rigid protection board composed of a rubberized asphalt core, reinforced with a non-woven fiberglass mat and sandwiched between two protective polypropylene layers, with a minimum nominal thickness of 4.5 mm. The material supplier and contractor's assumption that the protection board would be acceptable under the North American Free Trade Agreement (NAFTA) or the U.S. and Canada Trade Agreement signed effective February 16, 2010, was made so in error. Therefore, the City did not submit a waiver request until November 10, 2010. The City's Materials Lab consulted with EPA personnel and correctly identified that a waiver would be required for the protection board. There is no indication that the City failed to request a waiver in order to avoid the requirements of the ARRA, particularly since there are no domestically manufactured products that meet the project specification. EPA will consider the City's waiver request, a foreseeable late request, as though it had been timely made since there is no gain by the City and no loss by the government due to the late request.

The April 28, 2009 EPA HQ Memorandum, Implementation of Buy American provisions of Public Law 111–5, the "American Recovery and Reinvestment Act of 2009", defines "satisfactory quality" as the quality of iron, steel or the relevant manufactured good as specified in the project plans and design. The City has provided information to the EPA representing that there are currently no domestic manufacturers of the semi-rigid protection boards that meet the project

specification requirements. Based on additional research by EPA's consulting contractor (Cadmus) and to the best of the Region's knowledge at this time, there does not appear to be any other manufacturers capable of meeting the City's specifications.

Furthermore, the purpose of the ARRA provisions was to stimulate economic recovery by funding current infrastructure construction, not to delay projects that are already shovel ready by requiring entities, like the City, to revise their design and potentially choose a more costly and less effective project. The imposition of ARRA Buy American requirements on such projects eligible for DWSRF assistance would result in unreasonable delay and thus displace the "shovel ready" status for this project. To further delay construction is in direct conflict with the most fundamental economic purposes of ARRA; to create or retain jobs.

The Drinking Water Unit has reviewed this waiver request and has determined that the supporting documentation provided by the City is sufficient to meet the following criteria listed under Section 1605(b) and in the April 28, 2009, Implementation of Buy American provisions of Public Law 111–5, the "American Recovery and Reinvestment Act of 2009" Memorandum: Iron, steel, and the manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality.

The basis for this project waiver is the authorization provided in Section 1605(b)(2), due to the lack of production of this product in the United States in sufficient and reasonably available quantities and of a satisfactory quality in order to meet the City's design specifications.

The March 31, 2009 Delegation of Authority Memorandum provided Regional Administrators with the authority to issue exceptions to Section 1605 of ARRA within the geographic boundaries of their respective regions and with respect to requests by individual grant recipients.

Having established both a proper basis to specify the particular good required for this project, and that this manufactured good was not available from a producer in the United States, the City is hereby granted a waiver from the Buy American requirements of Section 1605(a) of Public Law 111–5 for the purchase semi-rigid protection boards for a hot applied membrane waterproofing system (15,600 sheets each measuring 39½″ × 80″) for a reservoir cover, manufactured in Surrey, British Columbia, specified in the City's waiver request of November 10, 2010. This supplementary information constitutes the detailed written justification required by Section 1605(c) for waivers based on a finding under subsection (b).

Authority: Public Law 111–5, section 1605.

Issued on: Dated: January 31, 2011.

Dennis J. Mclerran,

Regional Administrator, EPA, Region 10.

[FR Doc. 2011–2606 Filed 2–4–11; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on February 10, 2011, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- January 13, 2011

B. New Business

- Spring 2011 Abstract of the Unified Agenda of Federal Regulatory and Deregulatory Actions and Spring 2011 Regulatory Performance Plan
- Request of Farm Credit Services of America, et al., to Form a Limited Liability Partnership to Facilitate Agricultural Equipment Financing Activities

C. Reports

- Office of Management Services Quarterly Report

Dated: February 3, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2011–2749 Filed 2–3–11; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Notice of Inquiry; Solicitation of Views on the Impact of Slow Steaming

AGENCY: Federal Maritime Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Maritime Commission ("FMC" or "Commission") is issuing this Notice of Inquiry ("NOI") to solicit public comment on the impact of slow steaming on U.S. ocean liner commerce. Generally, the Commission seeks public comment as to how the practice of slow steaming has (1) Impacted ocean liner carrier operations and shippers' international supply chains; (2) affected the cost and/or price of ocean liner service; and (3) mitigated greenhouse gas emissions.

DATES: Responses are due on or before April 5, 2011.

ADDRESSES: Submit comments to: Karen V. Gregory, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001.

Or e-mail non-confidential comments to: *secretary@fmc.gov* (e-mail comments as attachments preferably in Microsoft Word or PDF).

FOR FURTHER INFORMATION CONTACT: Austin L. Schmitt, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, Telephone: (202) 523–5796, E-mail: *aschmitt@fmc.gov*.

SUPPLEMENTARY INFORMATION: *Submit Comments:* Non-confidential filings may be submitted in hard copy or by e-mail as an attachment (preferably in Microsoft Word or PDF) addressed to *secretary@fmc.gov* on or before April 5, 2011. Include in the subject line: "FMC Slow Steaming—Response to NOI". Responses to this inquiry that seek confidential treatment must be submitted in hard copy by U.S. mail or courier. Confidential filings must be accompanied by a transmittal letter that identifies the filing as "confidential" and describes the nature and extent of the confidential treatment requested, e.g., commercially sensitive data. When submitting documents in response to the NOI that contain confidential information, the confidential copy of the filing must consist of the complete filing and be marked by the filer as

"Confidential- Restricted," with the confidential material clearly marked on each page. When a confidential filing is submitted, an original and one additional copy of the public version of the filing must be submitted. The public version of the filing should exclude confidential materials, and be clearly marked on each affected page, "confidential materials excluded." Questions regarding filing or treatment of confidential responses to this inquiry should be directed to the Commission's Secretary, Karen V. Gregory, at the telephone number or e-mail provided above.

Background

Over the past two years most ocean liner carriers regulated by the Commission have implemented the practice of slow steaming by which the normal service speed of ships is reduced in an effort to reduce bunker fuel costs which account for a high proportion of ship operating costs. Initially, ocean carriers took these measures in response to severely depressed international trade conditions, but slow steaming also is used to mitigate greenhouse gas emissions in response to new environmental initiatives and concerns.[1] By slow steaming, ocean liner carriers address both of these problems by significantly reducing total bunker fuel consumption and the associated emissions.[2]

In the U.S. ocean liner trades, the practice of slow steaming appears to be most prevalent in the transpacific trade. Data derived from Alphaliner, for example, shows that more than half of the 45 weekly services operating between U.S. west coast ports and Asia are currently slow steaming, while more than three-fourths of the 15 weekly services operating between U.S. east coast ports and Asia are doing so.[3] In contrast, just 20 percent of the 15 weekly services operating between the United States and North Europe are currently slow steaming.

This time last year, the Transpacific Stabilization Agreement ("TSA") added authority to its basic agreement that allowed its member lines to discuss and reach agreement on programs to reduce sources of environmental pollution caused by ocean liner operations.[4] So far, however, no specific TSA program has materialized under this authority, even though slow steaming has become more prevalent during this time in the transpacific trade and in other U.S. trades.

Slow steaming is a complex issue with advantages and disadvantages for both carriers and shippers depending on trade conditions and commodity transported. For example, when carriers are experiencing high bunker costs and low charter rates, slow steaming becomes more attractive to the carrier. When these conditions do not exist, slow steaming does not offer the carrier the same advantages. Thus, in the coming years, potential increases in fuel costs and planned vessel deliveries will weigh in favor of carriers continuing or expanding slow steaming, but a continued recovery in demand and rates will tend to mitigate the trend.

While a good deal of commentary and analysis have appeared in the trade press regarding the benefits that carriers derive from slow steaming services, information about how this practice has affected American exporters and importers is limited. In cases where shippers of low-value commodities receive lower rates as a result of the carrier passing along some of the fuel savings achieved through slow steaming, the additional time for transport may not be an issue for these shippers. On the other hand, shippers of high-value commodities may not find slow steaming advantageous because a potentially lower freight rate may not outweigh the added delay in accessing payments for goods rendered. Likewise, shippers of chilled meat and fresh produce may find slow steaming disadvantageous because the resulting longer transit times could lead to increased spoilage and less shelf-time in grocery stores.

These tradeoffs for U.S. importers and exporters assume that carriers pass at least a portion of the cost savings from slow steaming on to their customers. In the U.S. trades, where the vast majority of liner cargo travels under annual service contracts, it is unclear whether ocean carriers' customers have received those savings—either through adjustments to bunker fuel surcharges or the underlying rates.

Finally, slow steaming has efficiency and environmental benefits that should be factored into both carriers' and shippers' equations. But an accurate analysis of the impact requires reliable methods to measure and quantify those environmental benefits. Better information and more transparency on emissions savings from slow steaming would allow carriers and their customers to make shipping choices that reduce their carbon emissions—and receive full credit for those measures.

The Commission, therefore, has decided to request public comment on the effects of slow steaming practices on ocean liner operations, shippers' supply chains and their underlying businesses, capacity availability, container availability, ocean freight rates, fuel surcharges, and greenhouse gas emissions. Although slow steaming primarily affects the operations of shippers, carriers and rate discussion agreements, the Commission encourages all interested parties, including ports, maritime terminal operators, trade associations, environmental groups, and other governmental entities to submit comments or to identify any economic and environmental data and studies related to slow steaming. The questions below seek to solicit comments on how slow steaming has affected shippers' and carrier's business operations and the environment. Commenters may address any or all of the questions and are welcome to submit comments on the effects of slow steaming not addressed by any of these questions.

Questions Directed to Shippers

1. What do you see as the advantages and disadvantages of slow steaming?

2. How has slow steaming of ocean liner services impacted your overall business costs? How significant are those costs? What measures, if any, has your company taken to mitigate any negative cost impact on your business arising from slow steaming?

3. Has your company benefited from the fuel cost savings that slow steaming makes possible by obtaining, for example, lower freight rates or bunker adjustment surcharges? If so, identify those benefits and explain how significant they are.

[1] International shipping reportedly generates about three percent of global carbon emissions. *See* International Maritime Organization, Marine Environment Protection Committee, *Second IMO GHG Study 2009,* at 7, U.N. Doc. MEPC 59/INF. 10 (Apr. 9, 2009), available at *http://www5.imo.org/SharePoint/blastDataHelper.asp/data_id%3D26047/INF-10.pdf.*

[2] According to the United Nations Conference on Trade and Development, a 10 percent reduction in speed will reduce emissions by 19 percent per ton-mile. *See* United Nations Conference on Trade and Development, *Review of Maritime Transport 2010,* at 66, U.N. Doc. UNCTAD/RMT/2010 (Dec. 20, 2010), *available at http://www.unctad.org/Templates/webflyer.asp?docid=14218&intItemID=&lang=1&mode=downloads.* Similarly, one ocean carrier has found that reducing a ship's average operating speed by 20 percent may lower its daily fuel consumption by as much as 40 percent. *See* Press Release, Maersk, Slow Steaming Here to Stay (Sept. 1, 2010), *available at http://www.maersk.com/AboutMaersk/News/Pages/20100901-145240.aspx.*

[3] In addition to the weekly services that call exclusively at either the U.S. west coast or east coast, an additional six pendulum services call at ports on both coasts; two-thirds of these latter services are slow steaming.

[4] *See* Article 5(d) of the TSA's basic agreement available at *http://www2.fmc.gov/agreement_lib/011223-045-MC.pdf.* (Agreement No. 011223–45)

4. Describe how, and to what extent, the slow steaming of ocean liner services has impacted your company's supply chain, space availability, and container availability.

5. Are different services, i.e., slow steaming vs. normal steaming, available to your company from different ocean carriers over the same trade lane? Alternately, do any individual ocean carriers offer your company different transit times over the same trade lane with varying rates or other service features?

6. In the past year or so, have ocean transit times lengthened between the major port-pairs used in your company's ocean shipping operations on account of the slow steaming of services? If so, how much longer have those transit times become and between which port pairs?

7. Do ocean transit times vary significantly among the different services that link the major port-pairs used in your company's ocean shipping operations? When arranging shipments, what role do differences in transit time play in your carrier or service selection process?

8. If you have service contracts with ocean carriers, were transit times or slow steaming provisions included in those contracts? Was slow steaming consistent with your governing service contract provisions?

9. As a U.S. exporter, has the slow steaming of ocean liner services in the U.S. trades put your company at a competitive disadvantage in overseas markets? If so, please explain.

10. Identify and describe what benefits your company has derived from slow steaming (e.g., more reliable and predictable sailing schedules, a more stable supply chain, etc.).

11. Do you believe slow steaming is sustainable over the long-run? Please explain why or why not.

12. Do ocean carriers provide you with information on fuel, cost, or emissions savings that allow you to calculate and consider the benefits of slow steaming in choosing among transportation options?

13. Discuss whether your company uses slow steaming services to help reduce its carbon footprint on the goods it sells? If so, how substantial are these reductions? How do you measure or quantify these reductions? What type or form of information would better assist you in making choices that reduce your carbon footprint?

Questions Directed to Ocean Liner Carriers

1. What does your company see as the advantages and disadvantages of slow steaming?

2. What proportion of the ships your company operates in the U.S. trades slow steam? What proportion slow steam outbound from the United States? What proportion slow steam inbound to the United States? Please break this information down by trade lane.

3. Do you have plans to increase or decrease slow steaming during 2011 and/or the years that follow?

4. What factors help your company decide to slow steam any given service string? What factors cause your company to decide whether to slow steam in one direction only?

5. In the past year, by how much (*i.e.,* absolute amount and as a percent of the total) has your company reduced its bunker consumption, bunker fuel expenses, and carbon emissions as a result of slow steaming ships in U.S. ocean liner services?

6. Do you make this information on fuel, cost, and emissions savings available and transparent to your customers? If not, do you have plans to, and what is your goal date? If not, why not?

7. Do you offer shippers, over the same trade lane, different transit times by reason of slow steaming vs. normal steaming?

8. Have you passed cost savings along to shippers through adjustments to any bunker surcharge formulas, or by lowering rates? If not, do you have plans to, and what is your goal date? If not, why not?

9. Are there any costs incurred by the ships your company is slow steaming that would not accrue if they were operating at normal service speed and, if so, what are these costs and how significant are they?

10. What factors constrain your company's ability to slow steam more services or to further slow down ships that are already slow steaming (i.e., super-slow steaming)?

11. How many vessels do you add to service loops that begin slow steaming for part or all of the loop? Are there instances where vessels are not added?

12. Is your company adding new vessels to your fleet to accommodate slow steaming?

13. Are new ship designs incorporating hull and propulsion engine innovations to better accommodate slow steaming?

14. How has slow steaming impacted your company's on time performance of sailing schedules?

15. Are some shipper accounts more affected by slow steaming than others? If so, please explain. What measures has your company taken to try to mitigate any adverse impact of slow steaming on specific shipper accounts?

16. To what extent has slow steaming affected your company's ability to maintain or expand capacity in the U.S. trades and/or its ability to maintain adequate availability of containers at appropriate inland locations?

17. Do you believe slow steaming is sustainable over the long-run? Please explain why or why not.

18. If your company participates in one or more vessel sharing arrangements ("VSAs"), describe whether and to what extent VSAs are positively or negatively impacted by slow steaming.

Questions Directed to Rate Agreements That Establish a Bunker Surcharge Guideline

1. Within the geographic scope of your agreement, what proportion of the ships used by your members slow steam? What proportion slow steam outbound from the United States? What proportion slow steam inbound to the United States? Please break this information down by trade lane.

2. Please explain your method used for developing the bunker surcharge guideline. How can the formula be modified to reflect the savings realized from slow steaming?

3. Has your agreement discussed possible ways to pass cost savings along to shippers? If not, do you have plans to, and what is your goal date? If not, why not?

4. What measures has your agreement taken to try to mitigate any adverse impact of slow steaming on the trade?

5. To what extent has the prevalence of slow steaming within the geographic scope of your agreement influenced the type of discussions that take place or the type of information exchanged under the authorities contained in your agreement?

Questions Directed to All Interested Parties

1. What are the major benefits and costs associated with slow steaming?

2. To what extent has the slow steaming of services in the U.S. ocean liner trades reduced greenhouse gas emissions?

3. Discuss the likely long-term prevalence of slow steaming and its potential impacts on the economy and/or the environment.

4. How important is slow steaming in the overall effort to reduce emissions of greenhouse gases and other air pollutants arising from ocean liner operations?

5. What data sources are available to measure the economic and environmental impacts of slow steaming?

Along with comments, respondents should provide their name, their title/position, contact information (*e.g.,* telephone number and/or e-mail address), name and address of company or other entity and type of company or entity (e.g., carrier, exporter, importer, trade association, etc.).

Responses to the NOI will help the Commission ascertain more precisely the impact of slow steaming on U.S. ocean liner commerce, the ocean liner industry, the economy, and the global environment with a view to determining whether, and if so, what additional analyses or action by the Commission may be necessary.

To promote maximum participation, the NOI questions will be made available via the **Federal Register** and on the Commission's Web site at *http://www.fmc.gov* in a downloadable text or pdf file. They can also be obtained by contacting the Commission's Secretary, Karen V. Gregory, by telephone at (202) 523–5725 or by e-mail at *secretary@fmc.gov.* Please indicate whether you would prefer a hard copy or an e-mail copy of the NOI questions. Non-confidential comments may be sent to *secretary@fmc.gov* as an attachment to an e-mail submission. Such attachments should be submitted preferably in Microsoft Word or text-searchable PDF.

The Commission anticipates that most filed NOI comments will be made publicly available. The Commission believes that public availability of NOI comments is to be encouraged because it could improve public awareness of the impact of slow steaming on the environment and various segments of the maritime industry. Nevertheless, some commenting parties may wish to include commercially sensitive information as relevant or necessary in their responses by way of explaining their liner shipping experiences or detailing their responses in practical terms. To help assure that all potential respondents will provide usefully detailed information in their submissions, the Commission will provide confidential treatment to the extent allowed by law for those submissions, or parts of submissions, for which the parties request confidentiality.

By the Commission.

Karen V. Gregory,

Secretary.

[FR Doc. 2011–2482 Filed 2–4–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Project LAUNCH Cross-Site Evaluation.

OMB No.: 0970–0373.

Billing Accounting Code (SAC): 418422 (0994426).

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is planning to collect data as part of a cross-site evaluation of a new initiative called Project LAUNCH (Linking Actions for Unmet Needs in Children's Health). Project LAUNCH is intended to promote the healthy development and wellness of children ages birth to eight years. A total of 24 Project LAUNCH grantees are funded to improve coordination among child-serving systems, build infrastructure, and improve methods for providing services. Grantees will also implement a range of public health strategies to support young child wellness in a designated locality.

Data for the cross-site evaluation of Project LAUNCH will be collected through: (1) Interviews conducted either via telephone or during site-visits to Project LAUNCH grantees, and (2) semi-annual reports that will be submitted electronically on a Web-based data-entry system. Information will be collected from all Project LAUNCH grantees.

During either telephone interviews or the site visits, researchers will conduct interviews with Project LAUNCH service providers and collaborators in States/Tribes and local communities of focus. Interviewers will ask program administrators questions about all Project LAUNCH activities, including: Infrastructure development; collaboration and coordination among partner agencies, organizations, and service providers; and development, implementation, and refinement of service strategies.

As part of the proposed data collection, Project LAUNCH staff will be asked to submit semi-annual electronic reports on State/Tribal and local systems development and on services that children and families receive. The electronic data reports also will collect data about other Project LAUNCH-funded service enhancements, such as trainings, Project LAUNCH systems change activities, and changes in provider settings. Information provided in these reports will be aggregated on a quarterly basis, and reported semi-annually.

Respondents: State/Tribal Child Wellness Coordinator, State/Tribal Wellness Council Members, State ECCS Project Director, Local Child Wellness Coordinator, Local Wellness Council Members, Local Evaluator, and Local Service Providers.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Total annual burden hours
Telephone or Site Visit Interview guide	240	1	1.25	300
Electronic Data Reporting: Systems Measures	24	2	4	192
Electronic Data Reporting: Services Measures	24	2	8	384

Estimated Total Annual Burden Hours: 876.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. E-mail address: *OPREinfocollection@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: January 31, 2011.

Steven M. Hanmer,

Reports Clearance Officer.

[FR Doc. 2011–2551 Filed 2–4–11; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0601]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Current Good Manufacturing Practice Regulations for Medicated Feeds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 9, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0152. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Johnny Vilela, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–7651, *Juanmanuel.vilela@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Current Good Manufacturing Practice Regulations for Medicated Feeds—21 CFR Part 225 (OMB Control Number 0910–0152)—Extension

Under section 501 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 351), FDA has the statutory authority to issue current good manufacturing practice (cGMP) regulations for drugs, including medicated feeds. Medicated feeds are administered to animals for the prevention, cure, mitigation, or treatment of disease, or growth promotion and feed efficiency. Statutory requirements for cGMPs have been codified under part 225 (21 CFR part 225). Medicated feeds that are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the FD&C Act. Under part 225, a manufacturer is required to establish, maintain, and retain records for a medicated feed, including records to document procedures required during the manufacturing process to assure that proper quality control is maintained. Such records would, for example, contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (i.e., batch and stability testing), labels, and product distribution.

This information is needed so that FDA can monitor drug usage and possible misformulation of medicated feeds to investigate violative drug residues in products from treated animals and to investigate product defects when a drug is recalled. In addition, FDA will use the cGMP criteria in part 225 to determine whether or not the systems and procedures used by manufacturers of medicated feeds are adequate to assure that their feeds meet the requirements of the FD&C Act as to safety and also that they meet their claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the FD&C Act.

A license is required when the manufacture of a medicated feed involves the use of a drug or drugs that FDA has determined requires more control because of the need for a withdrawal period before slaughter or because of carcinogenic concerns. Conversely, a license is not required and the recordkeeping requirements are less demanding for those medicated feeds for which FDA has determined that the drugs used in their manufacture need less control. Respondents to this collection of information are commercial feed mills and mixer-feeders.

In the **Federal Register** of November, 29, 2010 (75 FR 73101), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received no comments.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN

[Registered licensed commercial feed mills] [1]

21 CFR section	Number of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per record	Total hours
225.42(b)(5) through (b)(8)	1,004	260	261,040	1	261,040
225.58(c) and (d)	1,004	45	45,180	.5	22,590
225.80(b)(2)	1,004	1,600	1,606,400	.12	192,768
225.102(b)(1)	1,004	7,800	7,831,200	.08	626,496
225.110(b)(1) and (b)(2)	1,004	7,800	7,831,200	.015	117,468
225.115(b)(1) and (b)(2)	1,004	5	5,020	.12	602
Total					1,220,964

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN

[Registered licensed mixer-feeders] [1]

21 CFR section	Number of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per record	Total hours
225.42(b)(5) through (b)(8)	100	260	26,000	.15	3,900
225.58(c) and (d)	100	36	3,600	.5	1,800
225.80(b)(2)	100	48	4,800	.12	576
225.102(b)(1)	100	260	26,000	.4	10,400
Total					16,676

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3—ESTIMATED ANNUAL RECORDKEEPING BURDEN

[Nonregistered unlicensed commercial feed mills) [1]

21 CFR section	Number of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per record	Total hours
225.142	8,000	4	32,000	1	32,000
225.158	8,000	1	8,000	4	32,000
225.180	8,000	96	768,000	.12	92,160
225.202	8,000	260	2,080,000	.65	1,352,000
Total					1,508,160

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4—ESTIMATED ANNUAL RECORDKEEPING BURDEN

[Nonregistered unlicensed mixer-feeders] [1]

21 CFR section	Number of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per record	Total hours
225.142	45,000	4	180,000	1	180,000
225.158	45,000	1	45,000	4	180,000
225.180	45,000	32	1,440,000	.12	172,800
225.202	45,000	260	11,700,000	.33	3,861,000
Total					4,393,800

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the times required for record preparation and maintenance is based on Agency communications with industry. Other information needed to finally calculate the total burden hours (*i.e.,* number of recordkeepers, number of medicated feeds being manufactured, etc.) is derived from Agency records and experience.

Dated: February 1, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–2548 Filed 2–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0536]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Guidance for Industry on Pharmacogenomic Data Submissions; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 9, 2011.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0557. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Berbakos, Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, 301–796–3792, *Elizabeth.Berbakos@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Pharmacogenomic Data Submissions—(OMB Control Number 0910–0557)—Extension

The guidance provides recommendations to sponsors submitting or holding investigational new drug applications (INDs), new drug applications (NDAs), or biologics license applications (BLAs) on what pharmacogenomic data should be submitted to the Agency during the drug development process. Sponsors holding and applicants submitting INDs, NDAs, or BLAs are subject to FDA requirements for submitting to the Agency data relevant to drug safety and efficacy (21 CFR 312.22, 312.23, 312.31, 312.33, 314.50, 314.81, 601.2, and 601.12).

The guidance interprets FDA regulations for IND, NDA, or BLA submissions, clarifying when the regulations require pharmacogenomics data to be submitted and when the submission of such data is voluntary. The pharmacogenomic data submissions described in the guidance that are required to be submitted to an IND, NDA, BLA, or annual report are covered by the information collection requirements under parts 312, 314, and 601 (21 CFR parts 312, 314, and 601) and are approved by OMB under control numbers 0910–0014 (part 312—INDs); 0910–0001 (part 314—NDAs and annual reports); and 0910–0338 (part 601—BLAs).

The guidance distinguishes between pharmacogenomic tests that may be considered valid biomarkers appropriate for regulatory decisionmaking, and other, less well-developed exploratory tests. The submission of exploratory pharmacogenomic data is not required under the regulations, although the Agency encourages the voluntary submission of such data.

The guidance describes the voluntary genomic data submission (VGDS) that can be used for such a voluntary submission. The guidance does not recommend a specific format for the VGDS, except that such a voluntary submission be designated as a VGDS. The data submitted in a VGDS and the level of detail should be sufficient for FDA to be able to interpret the information and independently analyze the data, verify results, and explore possible genotype-phenotype correlations across studies. FDA does not want the VGDS to be overly burdensome and time-consuming for the sponsor.

FDA has estimated the burden of preparing a voluntary submission described in the guidance that should be designated as a VGDS. Based on FDA's experience with this guidance over the past few years, and on FDA's familiarity with sponsors' interest in submitting pharmacogenomic data during the drug development process, FDA estimates that approximately seven sponsors will submit approximately one VGDS and that, on average, each VGDS will take approximately 50 hours to prepare and submit to FDA.

In the **Federal Register** of November 4, 2010 (75 FR 67983), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received on the information collection.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

	Number of Respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
Voluntary Genomic Data Submissions	7	1	7	50	350

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: January 26, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–2637 Filed 2–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0645]

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Contact Cooling System for Aesthetic Use; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Contact Cooling System for Aesthetic Use." This guidance document describes a means by which contact cooling systems for aesthetic use may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify contact cooling systems for aesthetic use into class II (special controls). The guidance document is immediately in effect as the special control for cooling system for aesthetic use, but it remains subject to comment in accordance with the Agency's good guidance practices (GGPs).

DATES: Submit electronic or written comments on the guidance at any time. General comments on Agency guidance are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled "Class II Special Controls Guidance Document: Contact Cooling System for Aesthetic Use" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. *See* the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Richard Felten, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 1436, Silver Spring, MD 20993–0002, 301–796–6392.

SUPPLEMENTARY INFORMATION:

I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying contact cooling systems for aesthetic use into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(f)(2)). The guidance document will serve as the special control for contact cooling systems for aesthetic use device. Section 513(f)(2) of the FD&C Act provides that any person who submits a premarket notification under section 510(k) of the FD&C Act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the FD&C Act, request that FDA classify the device under the criteria set forth in section 513(a)(1) of the FD&C Act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the time frames established by section 513(f)(2) of the FD&C Act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing the guidance as a final guidance document. Therefore, FDA is issuing the guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

The guidance is being issued consistent with FDA's good guidance practices regulation (§ 10.115). The guidance represents the Agency's current thinking on contact cooling systems for aesthetic use. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. To receive a hard copy of "Class II Special Controls Guidance Document: Contact Cooling System for Aesthetic Use," you may send a fax request to 301–847–8149. Please use the document number 1734 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

The guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR 812 have been approved under OMB control number 0910–0078; the collection of information 21 CFR 50.23 have been approved under OMB control number 0910–0586; the collections of information in 21 CFR 56.115 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 58 have been approved under OMB control number 0910–0119; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR 801 have been approved under OMB control number 0910–0485.

V. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 1, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–2553 Filed 2–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0066]

Molecular and Clinical Genetics Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Molecular and Clinical Genetics Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 8 and 9, 2011, from 8 a.m. to 6 p.m.

Addresses: FDA is opening a docket for public comment on this document. The docket will open for public comment on February 7, 2011, and will close on March 1, 2011. Interested persons are encouraged to use the docket to submit either electronic or written comments regarding this meeting. Submit electronic comments to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Location: Holiday Inn, Ballroom, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: James Swink, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–6313, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory

committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On March 8 and 9, 2011, the committee will discuss and make recommendations on scientific issues concerning direct to consumer (DTC) genetic tests that make medical claims. The scientific issues to be discussed include:

(1) The risks and benefits of making clinical genetic tests available for direct access by a consumer without the involvement of a clinician (*i.e.,* without a prescription). The discussion will include consideration of the benefits and risks of direct access for different tests or categories of tests that would support differences in the regulatory approach. Clinical genetic test categories that have been proposed to be offered directly to consumers include:

(a) Genetic carrier screening for hereditary diseases (*e.g.*, cystic fibrosis carrier screening);

(b) Genetic tests to predict risk for future development of disease, in currently healthy persons (*e.g.,* tests to predict risk of developing breast or ovarian cancer); and

(c) Genetic tests for treatment response prediction (*e.g.*, tests to predict whether individual will respond to a specific drug).

(2) The risks of and possible mitigations for incorrect, miscommunicated, or misunderstood test results for clinical genetic tests that might be beneficial if offered through direct access testing.

(3) The level and type of scientific evidence appropriate for supporting direct-to-consumer genetic testing claims including whether it should be different than that required to support similar claims for prescription use clinical genetic tests.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before February 23, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. immediately following lunch on March 8 and 9. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 15, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 16, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, Food and Drug Administration, at 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 2, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–2584 Filed 2–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Anti-Infective Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Anti-Infective Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 5, 2011, from 8:30 a.m. to 4 p.m.

Location: Hilton Washington DC/Silver Spring, The Ballrooms, 8727 Colesville Rd., Silver Spring, MD. The hotel telephone number is 301–589–5200.

Contact Person: Minh Doan, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, e-mail: *minh.doan@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On April 5, 2011, the committee will discuss new drug application (NDA) 20–1699, for FIDAXOMICIN tablets, submitted by Optimer Pharmaceuticals, Inc., for the requested indication of treatment of adults with *Clostridium difficile* infection (CDI), also known as *Clostridium difficile*-associated diarrhea (CDAD), and prevention of recurrences.

FDA intends to make background material available to the public no later than 2 business days before the meeting.

If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 22, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 14, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 15, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Minh Doan at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 2, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–2582 Filed 2–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 17 and 18, 2011, from 8 a.m. to 6 p.m.

Location: Hilton Washington DC North/Gaithersburg, Salons A, B, C and D, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Olga Claudio, Food and Drug Administration, Center for Devices and Radiological Health, 10903 New Hampshire Ave., Bldg. 66, rm. 1611, Silver Spring, MD, 301–796–7608, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On March 17, 2011, the committee will discuss, make recommendations and vote on information related to the premarket approval application (PMA) for the NovoTTF–100A Treatment Kit, sponsored by Hogan Lovells US LLP for NovoCure, Ltd. The NovoTTF–100A Treatment Kit is intended as a treatment for adult patients (greater than 21 years of age) with histologically- or radiologically-confirmed glioblastoma multiforme (GBM), following recurrence in the supra-tentorial region of the brain. The device is intended to be used as a monotherapy, after surgical and radiation options have been exhausted, in place of standard medical therapy for GBM. On March 18, 2011, the committee will discuss, make recommendations and vote on information related to the PMA for the Pipeline Embolization Device (PED), sponsored by Chestnut Medical. The PED is indicated for the endovascular treatment of large or giant wide-necked intracranial aneurysms in the paraclinoid region of the internal carotid artery.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 10, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. immediately following lunch on March 17 and 18. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 2, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by March 3, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Ms. Ann Marie Williams, Conference Management Staff, at 301–796–5966, at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 1, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–2574 Filed 2–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Tobacco Products Scientific Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Tobacco Products Scientific Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 17, 2011, from 8 a.m. to 5 p.m. and on March 18, 2011, from 8 a.m. until 12 noon.

Location: FDA White Oak Conference Center, Building 31 Conference Center, the Great Room (rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm*; under the heading "Resources for You," click on "White Oak Conference Center Parking and Transportation Information for FDA Advisory Committee Meetings." *Please note* that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Caryn Cohen, Office of Science, Center for Tobacco Products, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 1–877–287–1373 (choose Option 4), *e-mail: TPSAC@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On March 17 and 18, 2011, the committee will continue to receive updates from the Menthol Report Subcommittee and discuss plans for finalizing the report regarding the impact of use of menthol in cigarettes on the public health.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm*. Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before March 3, 2011. Oral presentations from the public will be scheduled between approximately 3 p.m. and 4 p.m. on March 17, 2011. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before February 24, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by February 25, 2011.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Caryn Cohen at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 1, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–2573 Filed 2–4–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and

need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 Advisory Allergy and Infectious Diseases Council; Allergy, Immunology and Transplantation Subcommittee.

Date: September 19, 2011.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Report from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 19, 2011.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Report from the Institute Director.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E/1E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E/1E2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Acquired Immunodeficiency Syndrome Subcommittee.

Date: September 19, 2011.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room A, Bethesda, MD 20892.

Closed: 1 p.m. to adjournment.

Agenda: Program advisory discussions and reports from division staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov*.

Name of Committee: National Advisory Allergy and Infectious Diseases Council; Microbiology and Infectious Diseases Subcommittee.

Date: September 19, 2011.

Closed: 8:30 a.m. to 10:15 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Reports from the Division Director and other staff.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms F1/F2, Bethesda, MD 20892.

Contact Person: Marvin R. Kalt, PhD, Director, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–7291, *kaltmr@niaid.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit. Information is also available on the Institute's/Center's home page: *http://www.niaid.nih.gov/facts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2598 Filed 2–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel;

Date: February 28–March 1, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lee Warren Slice, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, Bethesda, MD 20892, 301–435–0965.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS)

Dated: February 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2596 Filed 2–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. 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 contract proposals and the discussions could disclose confidential trade secrets or commercial

property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; SBIR Contract Review.

Date: March 16, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sheri A. Hild, PhD, Scientific Review Officer, National Institutes of Health, National Center for Research Resources, Office of Review, 6701 Democracy Blvd, Rm 1082, Bethesda, MD 20892, 301–435–0811, *hildsa@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards., National Institutes of Health, HHS)

Dated: February 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2595 Filed 2–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel; Sex Differences in Health and Survival.

Date: March 3, 2011.

Time: 3:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Rd, NW., Washington, DC 20015.

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Subjective Well-Being.

Date: March 17–18, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institutes on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7705, *JOHNSONJ9@NIA.NIH.GOV*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Neuroendrocrine Regulation of Bone Mass.

Date: March 23, 2011.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elaine Lewis, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, Suite 2C212, MSC–9205, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7707, *elainelewis@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2594 Filed 2–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group; Behavior and Social Science of Aging Review Committee.

Date: March 3–4, 2011.

Time: 5 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Jeannette L. Johnson, PhD, Scientific Review Officer, National Institutes On Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7705, *johnsonj9@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2593 Filed 2–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Asthma and Allergic Diseases Cooperative Research Centers.

Date: March 9–11, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Hotel—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Paul A. Amstad, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–402–7098, *pamstad@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 1, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–2591 Filed 2–4–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Forms G–325, G–325A, G–325B, and G–325C; Extension of an Existing Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review; Forms 325, G–325A, G–325B, and G–325C, Biographic Information; OMB Control No. 1615–0008.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until April 8, 2011.

During this 60 day period, USCIS will be evaluating whether to revise Forms G–325, G–325A, G–325B, and G–325C. Should USCIS decide to revise Forms G–325, G–325A, G–325B, and G–325C we will advise the public when we publish the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Forms G–325, G–325A, G–325B, and G–325C.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov*. When submitting comments by e-mail, please make sure to add OMB Control No. 1615–0008 in the subject box.

Note: The address listed in this notice should only be used to submit comments concerning the extension of the Forms G–325, G–325A, G–325B, and G–325C. Please do not submit requests for individual case status inquiries to this address. If you are seeking information about the status of your individual case, please check "My Case Status" online at *https://egov.uscis.gov/cris/Dashboard.do,* or call the USCIS National Customer Service Center at 1–800–375–5283 (TTY 1–800–767–1833).

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, 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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of an existing information collection.

(2) *Title of the Form/Collection:* Biographic Information.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Forms G–325, G–325A, G–325B, and G–325C; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. USCIS uses Forms G–325, G–325A, G–325B, and G–325C when it is necessary to check other agency records on applications or petitions submitted by applicants for certain benefits under the Immigration and Nationality Act (Act).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Form G–325—200,000 responses at 15 minutes (.25) per response; Form G–325A—583,921 responses at 15 minutes (.25) per response; Form G–325B—500,000 responses at 25 minutes (.416) per response; and Form G–325C—140,000 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 438,980 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov/*.

We may also be contacted at: USCIS, Regulatory Products Division, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020, Telephone number 202–272–8377.

Dated: February 1, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–2559 Filed 2–4–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–MB–2010–N022; 91200–1231–00WH–M3]

Information Collection Sent to the Office of Management and Budget (OMB) for Approval; OMB Control No. 1018–0023, Migratory Bird Surveys

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on February 28, 2011. 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before March 9, 2011.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 222–ARLSQ, 4401

North Fairfax Drive, Arlington, VA 22203 (mail), or *INFOCOL@fws.gov* (e-mail). Please include 1018–0023 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Khristi Wilkins at (301) 497–5557 (telephone) or *Khristi_A_Wilkins@fws.gov* (e-mail). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 1018–0023.

Title: Migratory Bird Surveys.

Service Form Number(s): 3–165, 3–165A—E, and 3–2056J—N.

Type of Request: Extension of a currently approved collection.

Description of Respondents: States and migratory game bird hunters.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually or on occasion.

Activity	Number of respondents	Number of responses	Completion time per response	Total annual burden hours
Migratory Bird Harvest Information Program	49	686	185 hours	126,910
Migratory Bird Hunter Survey:				
Form 3–2056J	37,100	37,100	5 minutes	3,092
Form 3–2056K	23,100	23,100	4 minutes	1,540
Form 3–2056L	11,700	11,700	4 minutes	780
Form 3–2056M	12,300	12,300	3 minutes	615
Parts Collection Survey:				
Form 3–165	6,500	117,000	5 minutes	9,750
Form 3–165A	6,000	6,000	1 minute	100
Form 3–165B	3,000	4,500	5 minutes	375
Form 3–165C	400	400	1 minute	7
Form 3–165D	2,600	2,600	1 minute	43
Form 3–165E	2,600	3,900	5 minutes	325
Sandhill Crane Harvest Survey:				
Form 3–2056N	8,300	8,300	3.5 minutes	484
Total	113,649	227,586		144,021

Abstract: The Migratory Bird Treaty Act (16 U.S.C. 703–711) and the Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for (1) the wise management of migratory bird populations frequenting the United States, and (2) setting hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well-being. These responsibilities dictate that we gather accurate data on various characteristics of migratory bird harvest. Based on information from harvest surveys, we can adjust hunting regulations as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

Under the Migratory Bird Harvest Program, State licensing authorities collect the name and address information needed to provide a sample frame of all licensed migratory bird hunters. Since Federal regulations require that the States collect this information, we are including the associated burden in our approval request to OMB.

The Migratory Bird Hunter Survey is based on the Migratory Bird Harvest Information Program, under which each State annually provides a list of all migratory bird hunters in the State. We randomly select migratory bird hunters and ask them to report their harvest. The resulting estimates of harvest per hunter are combined with the complete list of migratory bird hunters to provide estimates of the total harvest for the species surveyed.

The Parts Collection Survey estimates the species, sex, and age composition of the harvest, and the geographic and temporal distribution of the harvest. Randomly selected successful hunters who responded to the Migratory Bird Hunter Survey the previous year are asked to complete and return a postcard if they are willing to participate in the Parts Collection Survey. We provide postage-paid envelopes to respondents before the hunting season and ask them to send in a wing or the tail feathers from each duck or goose they harvest, or a wing from each mourning dove, woodcock, band-tailed pigeon, snipe, rail, or gallinule they harvest. We use the wings and tail feathers to identify the species, sex, and age of the harvested sample. We also ask respondents to report on the envelope the date and location of harvest for each bird. We combine the results of this survey with the harvest estimates obtained from the Migratory Bird Hunter Survey to provide species-specific national harvest estimates.

The combined results of these surveys enable us to evaluate the effects of season length, season dates, and bag limits on the harvest of each species, and thus help us determine appropriate hunting regulations.

The Sandhill Crane Harvest Survey is an annual questionnaire survey of people who obtained a sandhill crane hunting permit. At the end of the hunting season, we randomly select a sample of permit holders and ask them to report the date, location, and number of birds harvested for each of their sandhill crane hunts. Their responses provide estimates of the temporal and geographic distribution of the harvest as well as the average harvest per hunter, which, combined with the total number of permits issued, enables us to estimate the total harvest of sandhill cranes. Based on information from this survey, we adjust hunting regulations as needed.

Comments: On June 18, 2010, we published in the **Federal Register** (75 FR 34758) a notice of our intent to request that OMB renew this ICR. In that notice, we solicited comments for 60 days, ending on August 17, 2010. We received one comment. The commenter did not address the information collection requirements, but did express opposition to hunting and to the surveys. Our long-term objectives continue to include providing opportunities to harvest portions of certain migratory game bird populations and limit harvest to levels compatible with each population's ability to maintain healthy, viable numbers. Our harvest surveys are an integral part of our monitoring programs, which provide the information that we need to

ensure harvest levels are commensurate with the current status of migratory game bird populations and long-term population goals. We did not make any changes to the information collection.

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

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 any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: January 31, 2011.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2011–2541 Filed 2–4–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0055

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request renewed approval for the collection of information in 30 CFR part 877—Rights of Entry.

DATES: Comments on the proposed information collection must be received by April 8, 2011, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Room 202—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtrelease@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request contact John Trelease at (202) 208–2783, or electronically at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [*see* 5 CFR 1320.8(d)]. This notice identifies an information collection that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR part 877.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents and costs. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: 30 CFR Part 877—Rights of Entry.

OMB Control Number: 1029–0055.

Summary: This regulation establishes procedures for nonconsensual entry upon private lands for the purpose of abandoned mine land reclamation activities or exploratory studies when the landowner refuses consent or is not available.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: State abandoned mine land reclamation agencies.

Total Annual Responses: 12.

Total Annual Burden Hours: 38.

Total Annual Non-Wage Costs: $1,080 for publication costs.

Dated: February 1, 2011.

Steven M. Sheffield,

Acting Chief, Division of Regulatory Support.

[FR Doc. 2011–2589 Filed 2–4–11; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Strollers and Playards,* DN 2784; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Graco Children's Products Inc. on February 1, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain strollers and playards. The complaint names as respondent Baby Trend, Inc. of Ontario, CA.

The complainant, proposed respondents, other interested parties, and members of the public are invited

to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number ("Docket No. 2784") in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

Issued: February 1, 2011.

By order of the Commission.

William R. Bishop,

Meetings and Hearings Coordinator.

[FR Doc. 2011–2557 Filed 2–4–11; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–759]

In the Matter of Certain Birthing Simulators and Associated Systems; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 30, 2010, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Gaumard Scientific Company, Inc. of Miami, Florida. A letter supplementing the complaint was filed on January 21, 2011. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain birthing simulators and associated systems by reason of infringement of certain claims of U.S. Patent No. 6,503,087 ("the '087 patent") and U.S. Patent No. 7,114,954 ("the '954 patent"). The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and a cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Aarti Shah, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2657.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2010).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on January 31, 2011, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain birthing simulators and associated systems that infringe one or more of claims 16–20, 22, 23, 25–28, 30, 31, 33, 34, and 36–38 of the '087 patent and claims 1, 2, 6, 7, and 10 of the '954 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Gaumard Scientific Company, Inc., 14700 SW. 136 Street, Miami, FL 33196.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Shanghai Honglian Medical Instrument Development Co., Ltd. (d/b/a General Doctor), Floor 5, No. 1 Aijia Bldg., 288#

Wuhua Rd., Shanghai, China 200086; Shanghai Evenk International Trading Co., Ltd., Floor 5, No. 1 Aijia Bldg., 288# Wuhua Rd., Shanghai, China 200086.

(c) The Commission investigative attorney, party to this investigation, is Aarti Shah, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: February 1, 2011.

By order of the Commission.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. 2011–2544 Filed 2–4–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0091]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Customer Satisfaction Surveys.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 229, page 74082 on November 30, 2010, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until March 9, 2011. This process is conducted in accordance with 5 CFR 1320.10. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, *Attn:* DOJ Desk Officer, Fax: 202 395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number [1140–0291]. Also include the DOJ docket number found in brackets in the heading of this document.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Customer Satisfaction Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* none. *Abstract:* The Arson and Explosives Programs Division (AEPD) of the Bureau of Alcohol, Tobacco, Firearms and Explosives distribute program-specific customer satisfaction surveys to more effectively capture customer perception/satisfaction of services. AEPD's strategy is based on a commitment to provide the kind of customer service that will better accomplish ATF's mission.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete a 15 minute survey.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 125 total burden hours associated with this collection.

If additional information is required contact: Lynn Murray, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Two Constitution Square, 145 N Street, NE., Suite 2E–502, Washington, DC 20530.

Dated: February 2, 2011.

Lynn Murray,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. 2011–2609 Filed 2–4–11; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Proposed Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the proposed information collection request (ICR) sponsored by the Office of the Assistant Secretary for Administration and Management (OASAM) titled, "Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building," to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before March 9, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–5806 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: The DOL has created the Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building, Form DL1–6062B, that entities may use when applying to use conference and meeting capabilities located in the DOL headquarters building. This application is an information collection subject to the PRA.

A Federal agency generally cannot conduct or sponsor a collection of information unless it is currently approved by the OMB under the PRA and displays a currently valid OMB control number. Furthermore, the public is generally not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. For additional information, see the related notice published in the **Federal Register** on September 17, 2010 (75 FR 57062).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference ICR Reference Number 201009–1225–001. The OMB is particularly interested in comments that:

- 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 submission of responses.

Agency: Department of Labor, Office of the Assistant Secretary for Administration and Management (OASAM).

Type of Review: New collection.

Title of Collection: Application for Use of Public Space by Non-DOL Agencies in the Frances Perkins Building.

Form Numbers: DL1–6062B.

ICR Reference Number: 201009–1225–001.

Affected Public: Private sector—not-for-profit institutions.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 10.

Total Estimated Annual Burden Hours: 1.

Total Estimated Annual Costs Burden: $0.

Dated: February 1, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–2600 Filed 2–4–11; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Funding Opportunity and Solicitation for Grant Applications (SGA) for Civic Justice Corps Grants Serving Juvenile Offenders

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Solicitation for Grant Applications (SGA).

Funding Opportunity Number: SGA/DFA PY 10–04.

SUMMARY: Through this notice, the Department of Labor's Employment and Training Administration (ETA) announces the availability of approximately $20 million in grant funds authorized by the Workforce Investment Act for Civic Justice Corps Grants to serve juvenile offenders ages 18 to 24 who have been involved with the juvenile justice system within 12 months before entry into the program. Civic Justice Corps projects funded through this grant announcement will provide young offenders the opportunity to give something back to their communities through community service to make up for past transgressions. Such projects hold promise for reducing the recidivism rate of juvenile offenders by improving their vocational and educational skills and long-term prospects in the labor market and by increasing their attachment to their community and their sense of community responsibility. These grants will be awarded through a competitive process. ETA intends to fund a minimum of 13 grants at various amounts. Applicants may submit only one proposal of up to $1.5 million to cover a 30-month period of performance that includes up to four months of planning and a minimum of 26 months of operation.

The complete SGA and any subsequent SGA amendments, in connection with this solicitation is described in further detail on ETA's Web site at *http://www.doleta.gov/*

grants/find_grants.cfm or on *http://www.grants.gov.* The Web sites provide application information, eligibility requirements, review and selection procedures and other program requirements governing this solicitation.

DATES: The closing date for receipt of applications is March 15, 2011.

FOR FURTHER INFORMATION CONTACT: Denise Roach, 200 Constitution Avenue, NW., Room N4716, Washington, DC 20210; telephone: 202–693–3820.

Signed in Washington, DC, this 1st day of February, 2011.

Eric Luetkenhaus,

Grant Officer, Employment and Training Administration.

[FR Doc. 2011–2572 Filed 2–4–11; 8:45 am]

BILLING CODE 4510–FT–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before March 9, 2011. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–1539. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–11–11, 1 item, 1 temporary item). Master files of an electronic information system used in the assignment and management of officer personnel, including information used to create officer records briefs.

2. Department of the Army, Agency-wide (N1–AU–11–12, 1 item, 1 temporary item). Master files of an electronic information system containing data used to track personnel and equipment.

3. Department of the Army, Agency-wide (N1–AU–11–13, 1 item, 1 temporary item). Master files of an electronic information system containing daily operations, training, mobilization, planning, support, and administrative task information for the National Guard and Reserves.

4. Department of the Army, Agency-wide (N1–AU–11–19, 1 item, 1 temporary item). Master files of an electronic information system used to automate and reduce the delay and requirements for personnel transfer between agency components. The system contains human resources data for the Army Reserve, Army National Guard, and active Army personnel.

5. Department of Commerce, Economics and Statistics Administration (N1–40–11–1, 2 items, 2 temporary items). Master files, system documentation, and CD–ROM products of an electronic information system

containing copies of economic statistical information from contributing Federal agencies. Record copies of the information are maintained permanently in the agencies that created them.

6. Department of Homeland Security, U.S. Immigration and Customs Enforcement (N1–567–11–2, 3 items, 3 temporary items). Master files of an electronic information system containing immigration surety bond submissions by bondsman and verifications of eligibility for release on bond.

7. Department of the Interior, National Business Center (N1–48–10–4, 4 items, 4 temporary items). Records relating to general management activities including vital records plans, memorandums of agreements, and continuity of operations plans.

8. Department of the Interior, Office of Insular Affairs (N1–48–10–5, 1 item, 1 temporary item). Grant case files relating to administrative activities in coordinating Federal policy in American Samoa, Guam, the Virgin Islands, and Northern Marianas.

9. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (N1–436–11–1, 1 item, 1 temporary item). Certificates of Origin for new vehicles ordered by the agency.

10. Department of Labor, Executive Secretariat (N1–174–09–4, 1 item, 1 temporary item). Master files of an electronic information management system used to manage electronic images of internal and external correspondence.

11. Department of the Navy, Naval Criminal Investigative Service (DAA–0526–2010–1, 1 item, 1 temporary item). Reports of assessments and surveys relating to the security of ports, bases, and other installations.

12. Department of State, Bureau of Administration (N1–59–10–22, 2 items, 1 temporary item). Records relating to administrative activities of the Deputy Assistant Secretary (DAS) for Global Information Services. Includes correspondence, reports, presentations, and background materials. Proposed for permanent retention are DAS Program Files.

13. Department of Transportation, Federal Aviation Administration (N1–237–11–1, 3 items, 3 temporary items). Case files relating to fees imposed by public airport agencies to plan, design, and build airport infrastructure improvements and other related records.

14. Department of the Treasury, Internal Revenue Service (N1–58–10–17, 1 item, 1 temporary item). Official forms used to apply to assist non-resident and resident aliens and foreign investors in obtaining an Individual Taxpayer Identification Number.

15. Department of the Treasury, Internal Revenue Service (N1–58–10–18, 4 items, 4 temporary items). Master file, outputs, and system documentation of and electronic information system used to reformat and transfer taxpayer information.

16. Department of the Treasury, Internal Revenue Service (N1–58–10–19, 1 item, 1 temporary item). Copies of official forms used to report violations of financial recordkeeping and reporting regulations.

17. Department of the Treasury, Internal Revenue Service (N1–58–10–20, 1 item, 1 temporary item). Records of the Adjusted Gross Income (AGI) Data Sharing Project, including consent forms authorizing the agency to compile and share data with the Department of Agriculture.

18. Department of the Treasury, Internal Revenue Service (N1–58–10–22, 2 items, 2 temporary items). Master files and system documentation of an electronic information system used to detect potential unauthorized access to the agency's systems.

19. Commodity Futures Trading Commission, Agency-wide (N1–180–09–1, 6 items, 6 temporary items). Administrative policies, procedures, badging, and security system records.

20. Commodity Futures Trading Commission, Agency-wide (N1–180–09–3, 15 items, 14 temporary items). Electronic data and other records associated with an electronic information system that enables the agency to analyze the composition of the market. Proposed for permanent retention are reports generated by the system.

21. National Aeronautics and Space Administration, Agency-wide (N1–255–09–2, 1 item, 1 temporary item). Records relating to general employee suggestions, including background papers, suggestions, approvals, disapprovals, and review processes.

22. National Aeronautics and Space Administration, Agency-wide (N1–255–09–3, 4 items, 3 temporary items). Records relating to NASA training activities, including calendars, schedules, announcements, course descriptions, test results, and certifications. Proposed for permanent retention are unique training materials related to NASA space missions.

23. National Aeronautics and Space Administration, Agency-wide (N1–255–10–1, 8 items, 5 temporary items). Records relating to scientific and technical publications including background papers, local reports, and duplicate copies of reports and publications. Proposed for permanent retention are original publications, scientific and technical databases, and public and internal awareness publications.

24. National Reconnaissance Office, Agency-wide (N1–525–10–3, 1 item, 1 temporary item). Records relating to administrative appeals to release or access information.

25. Pretrial Services Agency, Office of Operations (N1–562–10–2, 1 item, 1 temporary item). Administrative log sheets used to capture daily administration of processes for preparing defendants for court appearances.

26. U.S. International Trade Commission, Office of the Chief Information Officer (N1–81–10–1, 8 items, 4 temporary items). Records include investigative files, audit resolution files, inspection reports, work papers, and administrative documents. Proposed for permanent retention are investigative files with significant historical value, final audit and inspection reports with significant historical value, peer reviews, and semi-annual management reports.

27. Department of the Army, Agency-wide (N1–AU–11–17, 1 item, 1 temporary item). Master files of an electronic information system containing assignment information and personnel data of senior officer personnel and civilian executives.

Dated: January 31, 2011.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 2011–2734 Filed 2–4–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

National Industrial Security Program Policy Advisory Committee (NISPPAC)

AGENCY: Information Security Oversight Office, National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. app 2) and implementing regulation 41 CFR 101–6, announcement is made for the following committee meeting. To discuss National Industrial Security Program policy matters.

DATES: The meeting will be held on March 3, 2011, from 10 a.m. to 12 p.m.

ADDRESS: National Archives and Records Administration, 700 Pennsylvania Avenue, NW., Archivist's Reception Room, Room 105, Washington, DC 20408.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public. However, due to space limitations and access procedures, the name and telephone number of individuals planning to attend must be submitted to the Information Security Oversight Office (ISOO) no later than Friday, February 25, 2011. ISOO will provide additional instructions for gaining access to the location of the meeting.

FOR FURTHER INFORMATION CONTACT: David O. Best, Senior Program Analyst, ISOO, National Archives Building, 700 Pennsylvania Avenue, NW., Washington, DC 20408, telephone number (202) 357–5123, or at *david.best@nara.gov*. Contact ISOO at *ISOO@nara.gov* and the NISPPAC at *NISPPAC@nara.gov.*

Dated: February 2, 2011.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 2011–2729 Filed 2–4–11; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Notice; Cancellation of Meeting

TIME AND DATE: 5:30 p.m., Wednesday, February 2, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, Telephone: 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2011–2697 Filed 2–3–11; 11:15 am]

BILLING CODE P

NATIONAL SCIENCE FOUNDATION

Assumption Buster Workshop: Defense-in-Depth Is a Smart Investment for Cyber Security

AGENCY: The National Coordination Office (NCO) for the Networking and Information Technology Research and Development (NITRD) Program.

ACTION: Call for participation.

FOR FURTHER INFORMATION CONTACT: *assumptionbusters@nitrd.gov.*

DATES: *Workshop:* March 22, 2011; *Deadline:* February 10, 2011. Apply via e-mail to *assumptionbusters@nitrd.gov* Travel expenses will be paid for selected participants who live more than 50 miles from Washington DC, up to the limits established by Federal Government travel regulations and restrictions.

SUMMARY: The NCO, on behalf of the Special Cyber Operations Research and Engineering (SCORE) Committee, an interagency working group that coordinates cyber security research activities in support of national security systems, is seeking expert participants in a day-long workshop on the pros and cons of the Defense-in-Depth strategy for cyber security. The workshop will be held March 22, 2011 in the Washington DC area. Applications will be accepted until 5 p.m. EST February 10, 2011. Accepted participants will be notified by February 28, 2011.

SUPPLEMENTARY INFORMATION:

Overview: This notice is issued by the National Coordination Office for the Networking and Information Technology Research and Development (NITRD) Program on behalf of the SCORE Committee.

Background: There is a strong and often repeated call for research to provide novel cyber security solutions. The rhetoric of this call is to elicit new solutions that are radically different from existing solutions. Continuing research that achieves only incremental improvements is a losing proposition. We are lagging behind and need technological leaps to get, and keep, ahead of adversaries who are themselves rapidly improving attack technology. To answer this call, we must examine the key assumptions that underlie current security architectures. Challenging those assumptions both opens up the possibilities for novel solutions that are rooted in a fundamentally different understanding of the problem and provides an even stronger basis for moving forward on those assumptions that are well-founded. The SCORE Committee is conducting a series of four workshops to begin the assumption buster process. The assumptions that underlie this series are that cyber space is an adversarial domain, that the adversary is tenacious, clever, and capable, and that re-examining cyber security solutions in the context of these assumptions will result in key insights that will lead to the novel solutions we desperately need. To ensure that our discussion has the requisite adversarial flavor, we are inviting researchers who develop solutions of the type under discussion, and researchers who exploit these solutions. The goal is to engage in robust debate of topics generally believed to be true to determine to what extent that claim is warranted. The adversarial nature of these debates is meant to ensure the threat environment is reflected in the discussion in order to elicit innovative research concepts that will have a greater chance of having a sustained positive impact on our cyber security posture.

The first topic to be explored in this series is "Defense-in-Depth Is a Smart Investment." The workshop on this topic will be held in the Washington DC area on March 22, 2011.

Assertion: "Defense-in-Depth is a smart investment because it provides an environment in which we can safely and securely conduct computing functions and achieve mission success."

This assertion reflects a commonly held viewpoint that Defense-in-Depth is a smart investment for achieving perfect safety/security in computing. To analyze this statement we must look at it from two perspectives. First, we need to determine how the cyber security community developed confidence in Defense-in-Depth despite mounting evidence of its limitations, and second, we must look at the mechanisms in place to evaluate the cost/benefit of implementing Defense-in-Depth that layers mechanisms of uncertain effectiveness.

Initially developed by the military for perimeter protection, Defense-in-Depth was adopted by the National Security Agency (NSA) for main-frame computer system protection. The Defense-in-Depth strategy was designed to provide multiple layers of security mechanisms focusing on people, technology, and operations (including physical security) in order to achieve robust information assurance (IA).[1] Today's highly networked computing environments, however, have significantly changed the cyber security calculus, and Defense-in-Depth has struggled to keep pace with change. Over time, it became evident that Defense-in-Depth failed to provide information assurance against all but the most elementary threats, in the process putting at risk mission essential functions. The 2009 White House Cyberspace Policy Review called for "changes in technology" to protect cyberspace, and the 2010 DHS DOD MOA sought to "aid in preventing, detecting, mitigating and recovering from the effects of an attack," suggesting

[1] *Defense-in-Depth: A practical strategy for achieving Information Assurance in today's highly networked environments.*

a new dimension for Defense-in-Depth along the lifecycle of an attack.

Defense-in-Depth can provide robust information assurance properties if implemented along multiple dimensions; however, we must consider whether layers of sometimes ineffective defense tools may result in delaying potential compromise without providing any guarantee that compromise will be completely prevented. In today's highly networked world, Defense-in-Depth may best be viewed as a practical way to defer harm rather than a means to security. It is worth considering whether the Defense-in-Depth strategy tends to contribute more to network survivability than it does to mission assurance.

Intrusions into DoD and other information systems over the past decade provide ample evidence that Defense-in-Depth provides no significant barrier to sophisticated, motivated, and determined adversaries given those adversaries can structure their attacks to pass through all the layers of defensive measures. In the meantime, kinetic Defense-in-Depth of weapons platforms (such as aircraft) evolved into a life-cycle strategy of stealth (prevent), radars (detect), jammers and chaff (mitigate), fire extinguishers (survive) and parachutes (recover), a strategy that could provide value in the cyber domain.

How to Apply

If you would like to participate in this workshop, please submit (1) a resume or curriculum vita of no more than two pages which highlights your expertise in this area and (2) a one-page paper stating your opinion of the assertion and outlining your key thoughts on the topic. The workshop will accommodate no more than 60 participants, so these brief documents need to make a compelling case for your participation. Applications should be submitted to *assumptionbusters@nitrd.gov* no later than 5 p.m. EST on February 10, 2011.

Selection and Notification

The SCORE committee will select an expert group that reflects a broad range of opinions on the assertion. Accepted participants will be notified by e-mail no later than February 28, 2011. We cannot guarantee that we will contact individuals who are not selected, though we will attempt to do so unless the volume of responses is overwhelming.

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on February 2, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–2580 Filed 2–4–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 52–017; NRC–2008–0149]

Virginia Electric and Power Company D/B/A/ Dominion Virginia Power and Old Dominion Electric Cooperative, North Anna Power Station Combined License Application; Notice of Intent To Prepare a Supplemental Environmental Impact Statement and Conduct Scoping Process

On June 28, 2010, Virginia Electric Power Company d/b/a Dominion Virginia Power and Old Dominion Electric Cooperative (jointly referred to as Dominion) submitted a revision to its combined license (COL) application to build and operate a new reactor at its North Anna Power Station (NAPS) site located in Louisa County, Virginia. The NAPS property is located on the shore of Lake Anna approximately 64 km (40 mi) north-west of Richmond. The proposed new reactor, Unit 3, would be located adjacent to the existing NAPS Units 1 and 2.

Dominion's revision to its COL application, which included an environmental report (ER), changed the referenced reactor technology from the Economic Simplified Boiling Water Reactor Design (ESBWR) to the U.S. Advanced Pressurized Water Reactor (US–APWR). This change in reactor technology by Dominion occurred after the U.S. Nuclear Regulatory Commission (NRC) staff completed its environmental review, which is documented in NUREG–1917, "Supplemental Environmental Impact Statement for the Combined License (COL) for North Anna Power Station, Unit 3." A notice of availability of the final supplemental environmental impact statement (SEIS) for the COL application (NUREG–1917) was published in the **Federal Register** by the Environmental Protection Agency (EPA) on March 26, 2010 (75 FR 14594). The environmental impacts analyzed within NUREG–1917 are based, in part, on the design, construction, and operation of an ESBWR at the North Anna site.

The NUREG–1917 supplemented the final environmental impact statement (FEIS) developed for the Dominion Nuclear North Anna, LLC Early Site Permit (ESP), which the NRC issued on November 27, 2007. A notice of availability of NUREG–1811, "Environmental Impact Statement for an Early Site Permit at the North Anna ESP Site," was published in the **Federal Register** by the EPA on December 22, 2006 (71 FR 77014).

The purpose of this notice is to inform the public that the NRC staff will prepare a supplement to NUREG–1917 pertaining to the change in the reactor design. In the supplement, the staff intends to identify any significant changes to the previous evaluation of environmental impacts arising from the change in referenced reactor design. Additionally, the NRC staff is providing the public an opportunity to participate in the environmental scoping process for this supplement. The scoping opportunity affords the public an occasion to provide comments concerning the revisions to the application.

This notice advises the public that the NRC staff intends to gather information pertaining to the June 28, 2010, revisions to Dominion's ER and to include this information in the new supplement to be prepared in support of the COL review. In accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) 51.45 and 51.50, the revised ER need not contain information or analysis submitted in the ER for the ESP stage or resolved in the FEIS for the ESP stage. This notice is being published in accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and NRC regulations found in 10 CFR Part 51. As set forth in 10 CFR 51.92(a), the staff is directed to prepare a supplement to an FEIS when a proposed action has not been taken and if: (1) There are substantial changes in the proposed action that are relevant to environmental concerns, or (2) there is new and significant information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts. In addition, 10 CFR 51.92(c) permits the staff to prepare a supplement to a FEIS when, in its opinion, preparation of a supplement will further the purposes of NEPA.

The NRC will conduct a scoping process on the revisions to the ER, and, as soon as practicable thereafter, will prepare a draft SEIS for public comment. Participation in the scoping process by members of the public and local State, Tribal, and Federal government agencies is encouraged. The scoping opportunity will be used to accomplish the following:

a. Determine how the information on the change in reactor design affects the staff's previous evaluation of environmental impacts associated with constructing and operating a new unit at the NAPS site and identify the significant issues arising from the change in reactor design to be analyzed in depth; including but not limited to, new and significant information regarding whether the design of the facility falls within the site characteristics and design parameters specified in the ESP;

b. Identify and eliminate from detailed study those issues that are peripheral or that are not significant as they pertain to the change in reactor design; and

c. Identify other environmental review and consultation requirements related to the information on the change in reactor design.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Dominion;

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved or that is authorized to develop and enforce relevant environmental standards;

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards;

d. Any affected Indian tribe; and

e. Any person who requests or has requested an opportunity to participate in the scoping process.

The ESP environmental impact statement (EIS) (NUREG–1811), the COL SEIS (NUREG–1917) and Dominion's revised ER are available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland or from the Publicly Available Records component of the NRC Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html,* which provides access through the NRC's Electronic Reading Room (ERR) link. The ADAMS accession number for the ESP EIS, the COL SEIS and the June 28, 2010, revision to the ER are, respectively: ML063470314, ML100680117, and ML102040545. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209 or 301–415–4737 or by sending an e-mail to pdr.resource@nrc.gov. These documents may also be viewed on the Internet at *http://www.nrc.gov/reactors/new-reactors/col/north-anna.html.* In addition, the following libraries have agreed to maintain these documents for public inspection: Jefferson-Madison Regional Library in Mineral, Virginia; Hanover Branch Library in Hanover, Virginia; Orange County Library in Orange, Virginia; Salem Church Library in Fredericksburg, Virginia; and C. Melvin Snow Memorial Branch Library in Spotsylvania, Virginia.

Members of the public may submit comments on the revisions to the ER by one of the following methods:

Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2008–0149. Comments may be submitted electronically through this Web site until the close of the comment period March 9, 2011. Please include Docket ID NRC–2008–0149 in the subject line of your comments.

Mail comments to: Chief, Rulemaking, Announcements, and Directives Branch, Division of Administrative Services, Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or by fax to 301–492–3446. Comments should cite the publication date and page number of this **Federal Register** notice. To ensure that comments are considered in the scoping process, written comments must be post-marked or delivered by the end of the scoping comment period, which is March 9, 2011.

Electronic comments via the Internet to the NRC at *NorthAnnaCOLEIS@nrc.gov.* Electronic submissions must be sent no later than March 9, 2011, to ensure that they will be considered in the scoping process.

Comments submitted will be posted on the NRC Web site and on the Federal rulemaking Web site, *Regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments and to remove any identifying or contact information in comments they do not want publicly disclosed.

The NRC staff may consider comments submitted after the end of the comment period, as time and resources permit. Participation in the scoping process does not entitle participants to become parties to the proceeding to which the SEIS relates.

At the conclusion of the scoping process, the NRC staff will prepare a concise summary of the determination and conclusions reached on the scope of the environmental review for the revisions to the Dominion application, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process for whom the staff has an address. The summary will also be available for inspection through the NRC ERR link. The staff will then prepare and issue for comment the draft SEIS, which will be the subject of separate **Federal Register** notices and a public meeting. Copies of the draft SEIS will be available for public inspection at the above-mentioned address, and one copy per request will be provided free of charge. After receipt and consideration of the comments on the draft SEIS, the NRC staff will prepare a final SEIS, which will also be available for public inspection.

Information about the proposed SEIS and the scoping process may be obtained from Ms. Tamsen Dozier, Environmental Project Manager at 1–800–368–5642, extension 2272 or via e-mail to *Tamsen.Dozier@nrc.gov.*

Dated at Rockville, Maryland, this 28th day of January 2011.

For the Nuclear Regulatory Commission.

Scott Flanders,

Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. 2011–2599 Filed 2–4–11; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Combined Federal Campaign, OPM 1417, 3206–0193

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Combined Federal Campaign (CFC), U.S. Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on a revision to information collection request (ICR) 3206–0193, Combined Federal Campaign, OPM Form 1417. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

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, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until April 8, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the revised information collection to the Combined Federal Campaign Operations, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6484, Washington, DC 20415, Attention: Curtis Rumbaugh or sent via electronic mail to *curtis.rumbaugh@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Combined Federal Campaign Operations, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6484, Washington, DC 20415, Attention: Curtis Rumbaugh or sent via electronic mail to *curtis.rumbaugh@opm.gov.*

SUPPLEMENTARY INFORMATION: The CFC OPM Online Form 1417 collects information from the 208 local CFC campaigns to verify campaign results and collect contact information. Revisions to the form include clarifying edits to items numbered 9, 12, and 14 of the Campaign Results Totals screen, the elimination of questions numbered 16–18 of the Campaign Results Totals screen and the addition of one charitable organization to the Campaign Results National Organizations Data Entry screen.

Analysis

Agency: Combined Federal Campaign, U.S. Office of Personnel Management.

Title: OPM Form 1417.

OMB Number: 3260–1093.

Frequency: Annually.

Affected Public: Federal Employees and Retirees.

Number of Respondents: 208.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 104 hours.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–2639 Filed 2–4–11; 8:45 am]

BILLING CODE 6325–46–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:

Form CB; OMB Control No. 3235–0518; SEC File No. 270–457.

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.

Form CB (17 CFR 239.800) is a Document filed in connection with a tender offer for a foreign private issuer. This form is used to report an issuer tender offer conducted in compliance with Exchange Act Rule 13e–4(h)(8) (17 CFR 240.13e–4(h)(8)) and a third-party tender offer conducted in compliance with Exchange Act Rule 14d–1(c) (17 CFR 240.14d–1(c)). Form CB takes approximately 0.5 hours per response to prepare and is filed by approximately 200 respondents annually. We estimate that 25% of the 0.5 hours per response (0.125 hours) is prepared by the respondent for an annual reporting burden of 25 hours (0.125 hours per response × 200 responses). The remaining 75% of the burden hours is prepared by outside counsel.

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 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 Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 6432 General Green Way, Alexandria, Virginia 22312; or send an e-mail to: *PRA_Mailbox@sec.gov.*

Dated: February 1, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2571 Filed 2–4–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Advantage Life Products, Inc., and B–Teller, Inc. (n/k/a CA Goldfields, Inc.), Order of Suspension of Trading

February 3, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Advantage Life Products, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of B–Teller, Inc. (n/k/a CA Goldfields, Inc.) because it has not filed any periodic reports since the period ended October 31, 2005.

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. EST on February 3, 2011, through 11:59 p.m. EST on February 16, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–2744 Filed 2–3–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63803; File No. SR–BATS–2011–003]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish a $5 Strike Price Program

January 31, 2011.

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 January 28, 2011, BATS Exchange, Inc. ("BATS" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The 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 for the BATS Exchange Options Market ("BATS Options") to amend Rule 19.6 (Series of Options Contracts Open for Trading) to allow the Exchange to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks ("$5 Strike Price Program") to provide investors and traders with additional opportunities and strategies to hedge high priced securities.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify Rule 19.6 to allow the Exchange to list and trade series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks ("$5 Strike Price Program") to provide investors and traders with additional opportunities and strategies to hedge high priced securities.

Currently, Rule 19.6 permits strike price intervals of $10 or greater where the strike price is greater than $200. The Exchange is proposing to add the proposed $5 Strike Price Program as an exception to the $10 or greater program language in Rule 19.6(d)(3). The proposal would allow the Exchange to list series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks. The Exchange specifically proposes to create new subparagraph (5) to Rule 19.6(d) to provide that the Exchange may list series in intervals of $5 or greater where the strike price is more than $200 in up to five (5) option classes on individual stocks. In addition, the Exchange proposes to include language permitting it to list $5 strike prices on any other option classes designated by other securities exchanges that employ programs similar to the $5 Strike Price Program. This reciprocity provision is consistent with other strike price programs operated by the Exchange and will help to eliminate confusion, as investors will be able to access these series across all exchanges that employ programs similar to the $5 Strike Price Program. The Exchange believes that this is consistent with the goals of the National Market System and the concepts of price improvement and best execution. Also, because all of the existing strike price programs that have been adopted by the various exchanges include reciprocity provisions, the Exchange believes that current proposal will eliminate confusion and prevent listing errors amongst the exchanges.

The Exchange believes the $5 Strike Price Program would offer investors a greater selection of strike prices at a lower cost. For example, if an investor wanted to purchase an option with an expiration of approximately one month, a $5 strike interval could offer a wider choice of strike prices which may result in reduced outlays in order to purchase the option. By way of illustration, using Google, Inc. ("GOOG") as an example, if GOOG were trading at $610[3] with approximately one month remaining until expiration, the front month (one month remaining) at-the-money call option (the 610 strike) might trade at approximately $17.50 and the next highest available strike (the 620 strike) might trade at approximately $13.00. By offering a 615 strike an investor would be able to trade a GOOG front month call option at approximately $15.25, thus providing an additional choice at a different price point.

Similarly, if an investor wanted to hedge exposure to an underlying stock position by selling call options, the investor may choose an option term with two months remaining until expiration. An additional $5 strike interval could offer additional and varying yields to the investor. For example if Apple, Inc. ("AAPL") were trading at $310[4] with approximately two months remaining until expiration, the second month (two months remaining) at-the-money call option (the 310 strike) might trade at approximately $14.50 and the next highest available strike (the 320) strike might trade at $9.90. If at expiration the price of AAPL closed at $310, the 310 strike call would have yielded a return of 4.68% and the 320 strike call would have yielded a return of 3.19% over the holding period. If the 315 strike call were available, that series might be priced at approximately $12.10 (a yield of 3.90% over the holding period) and would have had a lower risk of having the underlying stock called away at expiration than that of the 310 strike call.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of classes on individual stocks $5 Strike Price Program. The proposed $5 Strike Price Program would provide investors increased opportunities to improve returns and manage risk in the trading of equity options that overlie high priced stocks. In addition, the proposed $5 Strike Price Program would allow investors to establish equity options positions that are better tailored to meet their investment, trading and risk management requirements.

[3] The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

[4] The prices listed in this example are assumptions and not based on actual prices. The assumptions are made for illustrative purposes only using the stock price as a hypothetical.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes the $5 Strike Price Program proposal will provide the investing public and other market participants increased opportunities because a $5 series in high priced stocks will provide market participants additional opportunities to hedge high priced securities. This will allow investors to better manage their risk exposure, and the Exchange believes the proposed $5 Strike Price Program would benefit investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. While the $5 Strike Price Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of classes. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes and the Exchange does not believe that the additional price points will result in fractured liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the $5 Strike Price Program is substantially similar to that of another exchange that is already effective and operative.[9] Therefore, the Commission designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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–BATS–2011–003 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2011–003. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2011–003 and should be submitted on or before February 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2567 Filed 2–4–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[9] *See* Securities Exchange Act Release No. 63654 (January 6, 2011), 76 FR 2182 (January 12, 2011) (SR–Phlx–2010–158) (order approving establishment of a $5 Strike Price Program). *See also* Securities Exchange Act Release No. 63658 (January 6, 2011), 76 FR 2187 (January 12, 2011) (SR–Phlx–2011–02) (notice of filing and immediate effectiveness of reciprocity provision related to the $5 Strike Price Program).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63809; File No. SR–NASDAQ–2011–018]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The NASDAQ Stock Market LLC Regarding the Listing of Option Series with $1 Strike Prices

February 1, 2011.

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 January 31, 2011, The NASDAQ Stock Market LLC ("NASDAQ") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASDAQ. 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

NASDAQ is filing with the Commission a proposal for the NASDAQ Options Market ("NOM" or "Exchange") to amend Chapter IV, Supplementary Material .02 to Section 6 (Series of Options Contracts Open for Trading) to improve the operation of the $1 Strike Price Program (the "$1 Strike Program" or "Program").[3]

The text of the proposed rule change is available from NASDAQ's Web site at *http://nasdaq.cchwallstreet.com/Filings/,* at NASDAQ'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, NASDAQ 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. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The $1 Strike Program was initially approved as a pilot on March 12, 2008. *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (order approving). The program was subsequently made permanent and expanded. *See* Securities Exchange Act Release No. 58093 (July 3, 2008), 73 FR 39756 (July 10, 2008) (SR–NASDAQ–2008–057) (notice of filing and immediate effectiveness). The program was last expanded in 2010. *See* Securities Exchange Act Release No. 62451 (July 6, 2010), 75 FR 40001 (July 13, 2010) (SR–NASDAQ–2010–083) (notice of filing and immediate effectiveness). The $1 Strike Program is in Chapter IV, Section 6.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to improve the operation of the $1 Strike Program.

Currently, the $1 Strike Program only allows the listing of new $1 strikes within $5 of the previous day's closing price. In certain circumstances this has led to situations where there are no at-the-money $1 strikes for a day, despite significant demand. For instance, on November 15, 2010, the underlying shares of Isilon Systems Inc. opened at $33.83. It had closed the previous trading day at $26.29. Options were available in $1 intervals up to $31, but because of the restriction to only listing within $5 of the previous close, the following strikes were not permitted to be added during the day: $32, $33, $34, $36, $37 and $38.

The Exchange proposes that $1 interval strike prices be allowed to be added immediately within $5 of the official opening price in the primary listing market. Thus, on any day, $1 Strike Program strikes may be added within $5 of either the opening price or the previous day's closing price.

On occasion, the price movement in the underlying security has been so great that listing within $5 of either the previous day's closing price or the day's opening price will leave a gap in the continuity of strike prices. For instance, if an issue closes at $14 one day, and the next day opens above $27, the $21 and $22 strikes will be more than $5 from either benchmark. The Exchange proposes that any such discontinuity be avoided by allowing the listing of all $1 Strike Program strikes between the closing price and the opening price.

Additionally, issues that are in the $1 Strike Program may currently have $2.50 interval strike prices added that are more than $5 from the underlying price or are more than a nine months to expiration (long-term options series). In such cases, the listing of a $2.50 interval strike may lead to discontinuities in strike prices and also a lack of parallel strikes in different expiration months of the same issue. For instance, under the current rules, the Exchange may list a $12.50 strike in a $1 Strike Program issue where the underlying price is $24. This allowance was provided to avoid too large of an interval between the standard strike prices of $10 and $15. The unintended consequence, however, is that if the underlying price should decline to $16, the Exchange would not be able to list a $12 or $13 strike. If the underlying stayed near this level at expiration, a new expiration month would have the $12 and $13 strike but not the $12.50, leading to a disparity in strike intervals in different months of the same option class. This has also led to investor confusion, as they regularly request the addition of inappropriate strikes so as to roll a position from one month to another at the same strike level.

To avoid this problem, the Exchange may not list series with $2.50 intervals (*e.g.,* $12.50, $17.50) below $50 for any issue included within the $1 Strike Program, including long term option series. At each standard $5 increment strike more than $5 from the price of the underlying security, the Exchange proposes to list the strike $2 above the standard strike for each interval above the price of the underlying security, and $2 below the standard strike, for each interval below the price of the underlying security, provided it meets the Options Listing Procedures Plan ("OLPP") provisions in Chapter IV, Supplementary Material .06 to Section 6.[4] For instance, if the underlying security was trading at $19, the Exchange could list, for each month, the following strikes: $3, $5, $8, $10, $13, $14, $15, $16, $17, $18, $19, $20, $21, $22, $23, $24, $25, $27, $30, $32, $35, and $37.

Instead of $2.50 strikes for long-term options, the Exchange proposes to list one long-term $1 Strike option series strike in the interval between each standard $5 strike, with the $1 Strike being $2 above the standard strike price for each interval above the price of the underlying security, and $2 below the standard strike price, for each interval below the price of the underlying security. In addition, the Exchange may list the long-term $1 strike which is $2 above the standard strike just below the underlying price at the time of listing, and may add additional long term options series strikes as the price of the underlying security moves, consistent with the OLPP. For instance, if the underlying is trading at $21.25, long-term strikes could be listed at $15, $18, $20, $22, $25, $27, and $30. If the underlying subsequently moved to $22, the $32 strike could be added. If the

[4] Chapter IV, Supplementary Material .06 to Section 6 codifies the limitation on strike price ranges outlined in the OLPP, which, except in limited circumstances, prohibits options series with an exercise price more than 100% above or below the price of the underlying security if that price is $20 or less. If the price of the underlying security is greater than $20, the Exchange shall not list new options series with an exercise price more than 50% above or below the price of the underlying security.

underlying moved to $19.75, the $13, $10, $8, and $5 strikes could be added.

The Exchange also proposes that additional long-term option strikes may not be listed within $1 of an existing strike until less than nine months to expiration.

Finally, the Exchange represents that it has the necessary systems capacity to support the small increase in new options series that will result from the proposed changes to the $1 Strike Program.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and address issues that have arisen in the operation of the $1 Strike Program by providing a consistent application of strike price intervals for issues in the $1 Strike Program.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[9] Therefore, the Commission designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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–NASDAQ–2011–018 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–NASDAQ–2011–018. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–018 and should be submitted on or before February 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2568 Filed 2–4–11; 8:45 am]

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[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[9] *See* Securities Exchange Act Release No. 63773 (January 25, 2011) (SR–NYSEAmex–2010–109). *See also* Securities Exchange Act Release No. 63770 (January 25, 2011) (SR–NYSEArca–2010–106).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63810; File No. SR–Phlx–2011–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC Regarding the Listing of Option Series with $1 Strike Prices

February 1, 2011.

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 January 31, 2011, NASDAQ OMX PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 modify Commentary .05 to Phlx Rule 1012 (Series of Options Open for Trading) to improve the operation of the $1 Strike Price Program (the "$1 Strike Program" or "Program").[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* at the principal office of the Exchange, 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 this proposed rule change is to improve the operation of the $1 Strike Program.

Currently, the $1 Strike Program only allows the listing of new $1 strikes within $5 of the previous day's closing price. In certain circumstances this has led to situations where there are no at-the-money $1 strikes for a day, despite significant demand. For instance, on November 15, 2010, the underlying shares of Isilon Systems Inc. opened at $33.83. It had closed the previous trading day at $26.29. Options were available in $1 intervals up to $31, but because of the restriction to only listing within $5 of the previous close, the following strikes were not permitted to be added during the day: $32, $33, $34, $36, $37 and $38.

The Exchange proposes that $1 interval strike prices be allowed to be added immediately within $5 of the official opening price in the primary listing market. Thus, on any day, $1 Strike Program strikes may be added within $5 of either the opening price or the previous day's closing price.

On occasion, the price movement in the underlying security has been so great that listing within $5 of either the previous day's closing price or the day's opening price will leave a gap in the continuity of strike prices. For instance, if an issue closes at $14 one day, and the next day opens above $27, the $21 and $22 strikes will be more than $5 from either benchmark. The Exchange proposes that any such discontinuity be avoided by allowing the listing of all $1 Strike Program strikes between the closing price and the opening price.

Additionally, issues that are in the $1 Strike Program may currently have $2.50 interval strike prices added that are more than $5 from the underlying price or are more than nine months to expiration (long-term options series). In such cases, the listing of a $2.50 interval strike may lead to discontinuities in strike prices and also a lack of parallel strikes in different expiration months of the same issue. For instance, under the current rules, the Exchange may list a $12.50 strike in a $1 Strike Program issue where the underlying price is $24. This allowance was provided to avoid too large of an interval between the standard strike prices of $10 and $15. The unintended consequence, however, is that if the underlying price should decline to $16, the Exchange would not be able to list a $12 or $13 strike. If the underlying stayed near this level at expiration, a new expiration month would have the $12 and $13 strike but not the $12.50, leading to a disparity in strike intervals in different months of the same option class. This has also led to investor confusion, as they regularly request the addition of inappropriate strikes so as to roll a position from one month to another at the same strike level.

To avoid this problem, the Exchange may not list series with $2.50 intervals (e.g., $12.50, $17.50) below $50 for any issue included within the $1 Strike Program, including long term option series. At each standard $5 increment strike more than $5 from the price of the underlying security, the Exchange proposes to list the strike $2 above the standard strike for each interval above the price of the underlying security, and $2 below the standard strike, for each interval below the price of the underlying security, provided it meets the Options Listing Procedures Plan ("OLPP") provisions in Commentary .10 to Rule 1012.[4] For instance, if the underlying security was trading at $19, the Exchange could list, for each month, the following strikes: $3, $5, $8, $10, $13, $14, $15, $16, $17, $18, $19, $20, $21, $22, $23, $24, $25, $27, $30, $32, $35, and $37.

Instead of $2.50 strikes for long-term options, the Exchange proposes to list one long-term $1 Strike option series strike in the interval between each standard $5 strike, with the $1 Strike being $2 above the standard strike price for each interval above the price of the underlying security, and $2 below the standard strike price, for each interval below the price of the underlying security. In addition, the Exchange may list the long-term $1 strike which is $2 above the standard strike just below the underlying price at the time of listing, and may add additional long term options series strikes as the price of the underlying security moves, consistent with the OLPP. For instance, if the underlying is trading at $21.25, long-term strikes could be listed at $15, $18, $20, $22, $25, $27, and $30. If the underlying subsequently moved to $22, the $32 strike could be added. If the underlying moved to $19.75, the $13, $10, $8, and $5 strikes could be added.

The Exchange also proposes that additional long-term option strikes may not be listed within $1 of an existing strike until less than nine months to expiration.

Finally, the Exchange represents that it has the necessary systems capacity to support the small increase in new options series that will result from the proposed changes to the $1 Strike Program.

[3] The $1 Strike Program was initially approved on June 11, 2003 as pilot, and was then extended several times until June 5, 2008. *See* Securities Exchange Act Release Nos. 48013 (June 11, 2003), 68 FR 35933 (June 17, 2003) (SR–Phlx–2002–55) (approval of pilot program); 49801 (June 3, 2004), 69 FR 32652 (June 10, 2004) (SR–Phlx–2004–38); 51768 (May 31, 2005), 70 FR 33250 (June 7, 2005) (SR–Phlx–2005–35); 53938 (June 5, 2006), 71 FR 34178 (June 13, 2006) (SR–Phlx–2006–36); and 55666 (April 25, 2007), 72 FR 23879 (May 1, 2007) (SR–Phlx–2007–29). The program was subsequently expanded and made permanent in 2008. *See* Securities Exchange Act Release No. 57111 (January 8, 2008), 73 FR 2297 (January 14, 2008) (SR–Phlx–2008–01). The program was last expanded in 2010. *See* Securities Exchange Act Release No. 62420 (June 30, 2010), 75 FR 39593 (July 9, 2010) (SR–Phlx–2010–72). The $1 Strike Program is found in Commentary .05 to Rule 1012.

[4] Commentary .10 to Rule 1012 codifies the limitation on strike price ranges outlined in the OLPP, which, except in limited circumstances, prohibits options series with an exercise price more than 100% above or below the price of the underlying security if that price is $20 or less. If the price of the underlying security is greater than $20, the Exchange shall not list new options series with an exercise price more than 50% above or below the price of the underlying security.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [5] in general, and furthers the objectives of Section 6(b)(5) of the Act [6] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. In particular, the proposed rule change seeks to reduce investor confusion and address issues that have arisen in the operation of the $1 Strike Program by providing a consistent application of strike price intervals for issues in the $1 Strike Program.

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 does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, 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, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[9] Therefore, the Commission designates the proposal operative upon filing.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend 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–2011–14 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–2011–14. 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 website 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–14 and should be submitted on or before February 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2569 Filed 2–4–11; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived the five-day prefiling requirement in this case.

[9] *See* Securities Exchange Act Release No. 63773 (January 25, 2011) (SR–NYSEAmex–2010–109). *See also* Securities Exchange Act Release No.63770 (January 25, 2011) (SR–NYSEArca–2010–106).

[10] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63815; File No. SR–NASDAQ–2011–012]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Modify NASDAQ Options Market Rules Chapter VII, Various Sections, Dealing With Market Maker Obligations

February 1, 2011.

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 January 19, 2011, The NASDAQ Stock Market LLC ("NASDAQ") 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 NASDAQ. 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

NASDAQ proposes to amend Chapter VII, Section 3, Continuing Market Maker Registration, Section 5, Obligations of Market Makers, and Section 6, Market Maker Quotations, of the NASDAQ rulebook for the NASDAQ Options Market ("NOM") to: (a) Permit Market Maker assignment by option rather than by series; (b) adopt a $5 quotation

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

spread parameter; and (c) amend the quoting requirement for Market Makers as explained further below. These changes are scheduled to be implemented on NOM on or about May 1, 2011; the Exchange will announce the implementation schedule by Options Trader Alert, once the rollout schedule, which will be based in part on NOM participants' readiness, is finalized.

The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com,* at NASDAQ's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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. NASDAQ 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 strengthen Market Maker obligations. The NASDAQ Options Market ("NOM"), the options trading facility of The NASDAQ Stock Market LLC, has been fully operational for over two years. During this time, NASDAQ has carefully considered the role of Market Makers in the NOM marketplace and their concomitant obligations.

An Options Market Maker is a Participant [3] registered with NASDAQ as a Market Maker.[4] Market Makers on NOM have certain obligations such as maintaining two-sided markets and participating in transactions that are "reasonably calculated to contribute to the maintenance of a fair and orderly market." [5] To register as a Market Maker, a Participant must file a written application with Nasdaq Regulation, which will consider an applicant's market making ability and other factors it deems appropriate in determining whether to approve an applicant's registration.[6] All Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder.[7] The NOM Rules place no limit on the number of qualifying entities that may become Market Makers.[8] The good standing of a Market Maker may be suspended, terminated, or withdrawn if the conditions for approval cease to be maintained or the Market Maker violates any of its agreements with NASDAQ or any provisions of the NOM Rules.[9]

Currently, a Participant that has qualified as a Market Maker may register to make markets in individual series of options.[10] Instead, NASDAQ proposes to require that Market Makers register by option. Thus, once so registered, a NOM Market Maker is subject to the market making obligations in all series of that option, except Quarterly Options Series, adjusted option series and any options series until the time to expiration for such series is less than nine months.[11] In order to effect this change, NASDAQ proposes to amend various provisions in Sections 3, 5 and 6 of Chapter VII that currently refer to "series." NASDAQ believes that registration by option rather than series should spread the benefits of Market Maker quoting across all series of an option, which should, in turn, result in higher quality markets.

NASDAQ also proposes to adopt quotation spread parameters, also known as bid/ask differentials, which establish the maximum permissible width between a Market Maker's bid and an offer in a particular series. Specifically, NASDAQ proposes to adopt a $5 wide quote spread parameter for all options.[12] Currently, NOM Market Makers are not subject to quote spread parameters, such that the requirement for a two-sided market can be met with a quotation that is very wide. NASDAQ believes that a $5 quote spread parameter for NOM Market Makers should result in narrower markets, and thereby, improve the quality of NOM's markets.

Lastly, NASDAQ proposes to amend its quotation requirement for Market Makers. Today, NOM Market Makers are required to make markets on a continuous basis in at least 75% of the options series in which the Market Maker is registered. NASDAQ proposes to change this requirement to 60% of the series; in those series, to satisfy this requirement with respect to quoting a series, a Market Maker must quote such series 90% of the trading day (as a percentage of the total number of minutes in such trading day) [13] or such higher percentage as the Exchange may announce in advance.[14] Nasdaq Regulation may consider exceptions to the requirement to quote 90% (or higher) of the trading day based on demonstrated legal or regulatory requirements or other mitigating circumstances. Although the proposed 60% requirement is lower than the current 75%, the Exchange is also proposing herein to adopt, for the first time, a quote spread requirement and a requirement to register by option rather than by series, which are considerable changes for Market Makers. NASDAQ believes that this new 60% quoting requirement is needed to balance the proposed, new quotation spread parameters.

Under this proposal, NASDAQ recognizes that certain options series present special challenges for Market Makers, due to nontraditional terms. Accordingly, NASDAQ proposes that Quarterly Option Series, adjusted option series, and any option series until the time to expiration for such series is less than nine months be treated differently. Specifically, under this proposal, Market Makers shall not be subject to the continuous quoting obligation in Section 6(d)(1) [sic] of NOM rules in any Quarterly Option Series, any adjusted option series,[15] and any option series until the time to expiration for such series is less than nine months. Accordingly, the requirement to make two-sided markets set forth in 5(a)(i) of NOM Rules shall not apply to Market Makers respecting Quarterly Option Series, adjusted option series, and series

[3] The term "Options Participant" or "Participant" means a firm or organization that is registered with the Exchange pursuant to Chapter II of the NOM Rules for purposes of participating in options trading on NOM as a "Nasdaq Options Order Entry Firm" or "Nasdaq Options Market Maker."

[4] *See* NOM Rules, Chapter VII, Section 2.

[5] *See* NOM Rules, Chapter VII, Section 5(a).

[6] *See* NOM Rules, Chapter VII, Section 2(a).

[7] *See* NOM Rules, Chapter VII, Section 2.

[8] *See* NOM Rules, Chapter VII, Rule 2(c).

[9] *See* NOM Rules, Chapter VII, Section 4(b).

[10] *See* NOM Rules, Chapter VII, Section 3(a).

[11] *See* proposed NOM Rules, Chapter VII, Section 6(d)(i)(2).

[12] *See* proposed NOM Rules, Chapter VII, Section 6(d)(ii).

[13] For example, on a normal trading day, which lasts 390 minutes (from 9:30 a.m. to 4 p.m.), quoting in a series would need to be maintained for the total of at least 351 minutes in order to meet the 90%-of-the-trading-day threshold. In a shortened trading session, the total number of minutes the quote must be maintained would be lowered proportionately (and the same percentage threshold would apply).

[14] Any such higher percentage would involve an appropriate advance announcement, which would then be available on the Exchange's Web site. In the illustration above, if the Exchange set the threshold, for example, at 99% (rather than 90%), then on a normal trading day, quoting would need to be maintained for 386 (rather than 351) minutes out of the total of 390 minutes.

[15] For these purposes, an adjusted option series is an option series wherein one option contract in the series represents the delivery of other than 100 shares of underlying stock or Exchange-Traded Fund Shares.

with an expiration of nine months or greater.

In addition, if a technical failure or limitation of a system of the Exchange prevents a Market Maker from maintaining, or prevents a Market Maker from communicating to NOM, timely and accurate quotes, the duration of such failure or limitation shall not be included in any of the calculations under this subparagraph (i) with respect to the affected quotes.

As a whole, the proposed amendments are intended to improve the quality of NOM markets, while carefully considering the important role of Market Makers in the NOM marketplace. Adopting quotation spread parameters and requiring registration across the series of an option are intended to encourage market making in more series; at the same time, NASDAQ recognizes the need to balance these new, more burdensome obligations with a lower series quoting percentage requirement. This balance of obligations should help to make the market better for all participants. NASDAQ believes that it has crafted a reasonable balance in this proposal.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [16] in general, and furthers the objectives of Section 6(b)(5) of the Act [17] 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, and, in general, to protect investors and the public interest. The Exchange believes that the proposal is appropriate and reasonable for Market Makers, similar to the rules of other options exchanges (as specified below) and should, at the same time, enhance the quality of the Exchange's options markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–012 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–NASDAQ–2011–012. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–012 and should be submitted on or before February 28, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–2616 Filed 2–4–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–63811; File No. SR–OCC–2011–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change To Accommodate the Clearance of Relative Performance Options

February 1, 2011.

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 January 19, 2011, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared primarily by OCC. 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 proposed rule change would accommodate the clearance of options on certain indexes measuring the relative performance of one reference

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

security or reference index relative to a second reference security or reference index.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change is to accommodate the clearance of options on certain indexes measuring the relative performance of one reference security or reference index relative to a second reference security or reference index ("Relative Performance Options"). A reference security may be an exchange-traded fund ("ETF"). The revised rules have been broadly drafted to cover Alpha Options (described below) and any similar product that may be listed on any participant exchange in the future.

NASDAQ OMX PHLX LLC ("Phlx") is proposing to list options ("Alpha Options")[4] on NASDAQ OMX Alpha Indexes ("Alpha Indexes"), a family of indexes developed by NASDAQ OMX Group, Inc. ("Nasdaq"). Alpha Indexes are calculated based on two ETFs or other reference securities underlying options that are also traded on Phlx. For example, an Alpha Index may measure the relative total return of two non-ETF securities, two ETFs, or one ETF and one non-ETF security (the first component of each pair is referred to as the "Target Component," and the second component is referred to as the "Benchmark Component"). The Alpha Index is calculated by measuring the total return performance of the Target Component relative to the total return performance of the Benchmark Component based upon prices of transactions on the primary listing exchange of each underlying component. Each Alpha Index will initially be set at 100.00. Alpha Options will be cash-settled, European-style options. In the event of a corporate event that eliminates one of the underlying components of an Alpha Index, Nasdaq will cease calculation of the Alpha Index for that pair of underlying components, and all outstanding option positions will be immediately settled at the last disseminated price of that Alpha Index.

Relative Performance Options are highly similar to other index options cleared by OCC except for the identity and nature of the underlying index. Therefore, OCC believes that the provisions of its By-Laws and Rules governing index options, as they are currently in effect, are generally sufficient to support the clearance and settlement of Relative Performance Options. However, minor modifications are needed to support Alpha Options and other types of Relative Performance Options that may be introduced in the future. For example, OCC's current Rules do not account for the possibility of an index having a negative value as could occur for certain Relative Performance Indexes. If this should ever occur, the index value would be deemed to be equal to zero or, because certain systems may not accept a zero index value, a near-zero positive amount. Therefore, OCC proposes to modify its By-Laws to provide for such potential adjustment of the index value by either the listing exchange or OCC.

In addition, OCC's current By-Laws do not account for the possibility that an expiration date may be accelerated when a reference security (*i.e.,* an individual reference security and not a reference index) that is one of the components of an underlying relative performance index ceases to be published as a result of a cash-out merger or similar corporate event. If the value of an underlying Relative Performance Index ceases to be published as a result of such an event, the value of the overlying options would become fixed. OCC therefore proposes to modify its By-Laws to provide that OCC will either accelerate or not accelerate the expiration in consultation with the relevant exchange on which the index underlying a Relative Performance Option is listed.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[5] because it is designed to promote the prompt and accurate clearance and settlement of transactions in, including the expiry of, Relative Performance Options, and to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. The proposed rule change accomplishes this purpose by applying substantially the same rules and procedures to these transactions as OCC applies to transactions in other index options. The proposed rule change is not inconsistent with the existing rules of OCC, including any rules proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. OCC will notify the Commission of any written comments received by OCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commissions 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–OCC–2011–02 on the subject line.

[3] The Commission has modified the text of the summaries prepared by OCC.

[4] *See* SR–Phlx–2010–176, Release No. 34–63575, December 17, 2010.

[5] 15 U.S.C. 78q–1.

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–OCC–2011–02. 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 such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_02.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2011–02 and should be submitted on or before February 22, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[6]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–2570 Filed 2–4–11; 8:45 am]

BILLING CODE 8011–01–P

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7317]

Culturally Significant Objects Imported for Exhibition Determinations: "Birth of the Modern: Style and Identity in Vienna 1900"

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, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Birth of the Modern: Style and Identity in Vienna 1900," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Neue Galerie, New York, New York, from on or about February 24, 2011, until on or about June 27, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* 202–632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 31, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–2644 Filed 2–4–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7318]

Culturally Significant Objects Imported for Exhibition Determinations: "Heinrich Kühn"

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, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition "Heinrich Kühn," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Fine Arts, Houston, Houston, TX, from on or about March 6, 2011, until on or about May 30, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 31, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–2646 Filed 2–4–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 7319]

Culturally Significant Objects Imported for Exhibition Determinations: "Splendors of Faith/Scars of Conquest: The Arts of the Missions of Northern New Spain, 1600–1821"

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 object to be included in the exhibition "Splendors of Faith/Scars of Conquest: The Arts of the Missions of Northern New Spain, 1600–1821," imported from abroad for temporary exhibition within the United

States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Oakland Museum of California, Oakland, CA, from on or about February 26, 2011, until on or about May 29, 2011, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: January 31, 2011.

Ann Stock,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–2647 Filed 2–4–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7320]

Intergovernmental Panel on Climate Change Special Report Review

AGENCY: Department of State.

ACTION: The United States Global Change Research, in cooperation with the Department of State, request expert review of the Special Report on *Managing the Risks of Extreme Events and Disasters To Advance Climate Change Adaptation (SREX*) of the Intergovernmental Panel on Climate Change (IPCC).

SUMMARY: The IPCC was established as an intergovernmental body under the auspices of the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) in 1988. In accordance with its mandate and as reaffirmed in various decisions by the Panel, the major activity of the IPCC is to prepare comprehensive and up-to-date assessments of policy-relevant scientific, technical, and socio-economic information for understanding the scientific basis of climate change, potential impacts, and options for mitigation and adaptation. More information about the IPCC can be found at *http://www.ipcc.ch.*

The IPCC develops a comprehensive assessment spanning all the above topics approximately every six years. In addition to these comprehensive assessments, the IPCC periodically develops Special Reports on specific topics. The Preparation of Special Reports follows the same procedures as for the Assessment Reports. Governments develop and approve plans for reports, and nominate scientists and experts as lead authors and reviewers. Authors prepare the reports, which go through several stages of review, following which member governments at a session of the IPCC accept them. Member governments also approve the executive summaries of the reports (known as a "summary for policy makers") in detail at the time that they accept the overall report. Principles and procedures for the IPCC and its preparation of reports can be found at the following Web sites:

- *http://www.ipcc-wg2.gov/AR5/extremes-sr/extremes_documents/ipcc-principles-appendix-a.pdf* (pdf)
- *http://ipcc.ch/organization/organization_procedures.shtml*

In April 2009, the IPCC approved the development of a special report on "*Managing the Risks of Extreme Events and Disasters to Advance Climate Change Adaptation (SREX).*" The SRREX is being developed under the leadership of the IPCC Working Group II. This report will exclusively focus on events and disasters that are related to climate change. The *IPCC 4th Assessment Report* identified and demonstrated the usefulness of taking a risk perspective in order to identify ways in which civil society can promote sustainable development while reducing the risk of climate-related damages and taking advantage of opportunities that climate change will offer. This Special Report aims to assess policies, measures and tools and practice for managing the risk of extreme events to advance effective adaptation.

All IPCC reports go through two broad reviews: a "first-order draft" for experts, and a "second-order draft" for experts and governments. The IPCC Secretariat has informed the U.S. Department of State that the second-order draft of the SREX is available for expert and government review on February 7.

The approved outline of the report has a total of nine chapters. The early sections of the report discusses new dimensions in disaster risk, exposure, vulnerability and resilience, the determinants of risk, and changes in climate extremes and their associated impacts on the natural environment, human systems and ecosystems. The following section of the report discusses risk management at the local, national and international including cross-scale integrations. The report then outlines synergies between disaster risk management and climate adaptation as critical components for a resilient and sustainable future. The report closes with cases studies on extreme events, vulnerable populations and settings, and management approaches.

As part of the U.S. Government Review of the SREX, the U.S. Government is soliciting comments from experts in relevant fields of expertise. The Global Change Research Program will coordinate collection of U.S. expert comments and the review of the report by panels of Federal scientists and program managers in order to develop a consolidated U.S. Government submission. Expert comments received within the comment period will be considered for inclusion in the U.S. Government submission. Instructions for review and submission of comments are available at *http://www.globalchange.gov/srexreview.*

To be considered for inclusion in the U.S. Government collation, comments must be received by midnight March 7th, 2011. Comments submitted for consideration as part of the U.S. Government Review should be reserved for that purpose, and not also sent to the IPCC Secretariat as a discrete set of expert comments. Comments should be submitted using the Web-based system at: *http://www.globalchange.gov/srexreview.*

This certification will be published in the **Federal Register**.

Dated: February 1, 2011.

Christo Artusio,

Deputy Director, Office of Global Change, Department of State.

[FR Doc. 2011–2648 Filed 2–4–11; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Baker & Miller PLLC on behalf of the Kansas City Southern (WB595–9—12/21/10), for permission to use certain data from the Board's 2009 Carload Waybill Samples. A copy of this request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14

calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Andrea Pope-Matheson,

Clearance Clerk.

[FR Doc. 2011–2590 Filed 2–4–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments which concern "Conducting Focus Groups for Retail Securities Products."

DATES: Written comments should be received on or before April 11, 2011, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Robert Schumacher, 200 Third Street, A4–A, Parkersburg, WV 26106–5318, or *robert.schumacher@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Robert Schumacher, Bureau of the Public Debt, 200 Third Street, A4–A, Parkersburg, WV 26106–5318, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Conducting Focus Groups for Retail Securities Products.

OMB Number: 1535–0142.

Abstract: The information from the survey will be used to improve customer service.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals.

Estimated Number of Respondents: 200.

Estimated Total Annual Burden Hours: 440.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 1, 2011.

Robert Schumacher,

Manager, Information Management Branch.

[FR Doc. 2011–2578 Filed 2–4–11; 8:45 am]

BILLING CODE 4810–39–P

FEDERAL REGISTER

Vol. 76 Monday,
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Part II

Department of Housing and Urban Development

24 CFR Parts 903, 905, 941 et al.
Public Housing Capital Fund Program; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 903, 905, 941, 968, 969

[Docket No. FR–5236–P–01]

RIN–2577–AC50

Public Housing Capital Fund Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule combines and streamlines the former legacy public housing modernization programs, including the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP), and the Public Housing Development Program (which encompasses mixed-finance development), into the Capital Fund Program (CFP). This rule proposes a change to the Public Housing Agency Annual Plan regulation to incorporate the definition of qualified public housing agencies (PHAs), which was mandated by the Housing and Economic Recovery Act (HERA) of 2008, and to decouple or separate the CFP informational requirements from the PHA Annual Plan requirements. Also proposed is the ability for PHAs to request a total development cost (TDC) exception for integrated utility management, capital planning, and other capital and management activities that maximize energy conservation and efficiency, including green construction and retrofits, which include windows; heating system replacements; wall insulation; site-based generation; advanced energy savings technologies, including renewable energy generation; and other such retrofits.

The structure of the proposed Public Housing Capital Fund Program regulation is described in section IV of the **SUPPLEMENTARY INFORMATION.** Several regulations would be eliminated with the implementation of this rule, along with the issuance of new and/or revised CFP forms, including the CFP Annual Statement/Performance and Evaluation Report (form HUD–50075.1), CFP 5-Year Action Plan (form HUD–50075.2), and the CFP Annual Contributions Contract (ACC) Amendment, as well as a new guidebook.

DATES: Comments Due Date: April 8, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service, toll free, at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeffrey Riddel, Director, Office of Capital Improvements, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–8000; telephone number 202–708–1640 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9(d) of the U.S. Housing Act of 1937 (1937 Act) (42 U.S.C. 1437g(d)) provides for a "Capital Fund" for the purpose of making assistance available to PHAs to carry out capital and management improvement activities. Section 9(d)(2) of the 1937 Act (42 U.S.C. 1437g(d)(2)) requires HUD to develop a formula for determining the amount of assistance provided to PHAs from the Capital Fund for a federal fiscal year (FFY). The formula "shall include" a mechanism to reward PHA performance. As required by statute, the Capital Fund formula (CF formula) was developed through negotiated rulemaking and promulgated through a final rule, published on March 16, 2000 (65 FR 14422), with certain minor amendments to remove some incorrect, unnecessary dates adopted by final rule published on May 2, 2000 (65 FR 25446).

Section 9(g) of the 1937 Act (42 U.S.C. 1437g(g)) provides for a certain amount of flexibility in the use of Capital Fund amounts. For PHAs other than small PHAs (that is, those with fewer than 250 units of public housing), a PHA may use up to 20 percent of its Capital Fund for activities that are eligible activities for the Operating Fund under section 9(e) of the 1937 Act (42 U.S.C. 1437g(e)). Small PHAs that meet certain statutory criteria related to operating and maintaining their public housing in safe, clean, and healthy condition may use 100 percent of their Capital Fund amounts for any statutorily eligible use under the Operating Fund.

Section 9(g)(3) of the 1937 Act (42 U.S.C. 1437g(g)(3)) imposes limitations on the use of the Capital Fund or Operating Fund for new construction. Generally, the CF formula shall not provide PHAs funding for the purpose of constructing public housing units (which includes acquisition), if the construction would result in a net increase from the number of housing units owned, operated, or assisted by the PHA on October 1, 1999. PHAs may use their CF formula amounts to construct units in excess of the "net increase" limitation, if the units are available and affordable to low-income families (42 U.S.C. 1437g(g)(3)(B)). The 1937 Act provides two exceptions to the "net increase" limitation on the CF

formula. One is where the funding for additional units is for a mixed-finance project (42 U.S.C. 1437g(g)(3)(C)(i)). The second exception is where the cost of the useful life of the project is less than the estimated cost of providing tenant-based assistance under the Housing Choice Voucher program (42 U.S.C. 1437g(g)(3)(C)(ii)).

Section 9(j) of the 1937 Act (42 U.S.C. 1437g(j)) provides for penalties for slow obligation and expenditure of Capital Funds. Generally, a PHA is required to obligate funds received under section 9 of the 1937 Act within 24 months of the date on which the funds become available or within 24 months of the date on which the PHA accumulates enough funds to undertake modernization, substantial rehabilitation, or construction of units (42 U.S.C. 1437g(j)(1)). Under section 9(j)(2)(B) of the 1937 Act (42 U.S.C. 1437g(j)(2)(B)), a PHA "shall disregard" this requirement with respect to unobligated amounts the total of which do not exceed 10 percent of the original allocation of Capital Funds to the PHA. Additionally, PHAs must expend their Capital Fund assistance within 4 years after the date on which the funds became available for obligation (42 U.S.C. 1437g(j)(5)). HUD may extend the time periods for obligation of Capital Funds for specific reasons listed in the statute and established by HUD by notice published in the **Federal Register** (42 U.S.C. 1437g(j)(2), 42 U.S.C. 1437g(j)(5)(A)). The statute lists potential sanctions for failure to comply with the obligation and expenditure deadlines, including withholding of funds, penalties applied to future grants, reallocation of funds to high-performing PHAs, and recapture (42 U.S.C. 1437g(j)(3), 42 U.S.C. 1437g(j)(6)). Regulations implementing the obligation and expenditure requirements were published on August 1, 2003 (68 FR 45731). These regulations are currently codified at 24 CFR 905.120, and would be moved to § 905.306 by this proposed rulemaking.

Former section 9(k) of the 1937 Act (42 U.S.C. 1437g(k)) provided for a fund reserve for emergency, natural disasters, and litigation needs, and for a set-aside for Operation Safe Home. Section 2804 of Title VII (Small Public Housing Authorities Paperwork Reduction Act) of Division B of the HERA (Pub. L. 110–289, approved July 30, 2008) removed section 9(k) of the 1937 Act.

Section 2702 of the Small Public Housing Authorities Paperwork Reduction Act amends section 5A of the 1937 Act (42 U.S.C. 1437c–1), to provide that certain PHAs, called "qualified public housing agencies," are not required to file the PHA Annual Plan called for in section 5A(b)(1) of the 1937 Act (42 U.S.C. 1437c–1(b)(1)). Qualified PHAs under section 2702 are those that administer 550 or fewer units—considered as the sum of all the public housing units and vouchers under section 8(o) of the 1937 Act (42 U.S.C. 1437f(o)) administered by a PHA—and are not designated as a troubled PHA under section 6(j)(2), and do not have a failing score under the Section 8 Management Assessment Program (SEMAP) during the prior 12 months.

Such PHAs must still submit a PHA 5-Year Plan, file the civil rights certification under 42 U.S.C. 1437c–1(d)(16), and consult with, and consider the recommendations of, the resident advisory board at the annual hearing required of such agencies regarding any changes to the goals, objectives, and policies of that PHA. The CFP (and previous CIAP and CGP) have always had separate informational requirements, but some of these were combined with the PHA Annual and 5-Year Plan. However, with the changes made to the PHA Annual Plan and the need to have grant reporting in compliance with CFP and other federal reporting requirements, the CFP informational requirements will be decoupled or separated from the PHA Annual Plan submissions.

II. Overview of the Capital Fund Program

This rule proposes to revise the regulations governing the use of assistance made available under the Capital Fund in 24 CFR part 905. Assistance under the Capital Fund is a primary, regular source of funding made available by HUD to a PHA for modernization and development of public housing and other capital activities. This rule also proposes to replace and remove several other regulations that currently govern a PHA's use of HUD assistance, specifically: 24 CFR part 941, entitled "Public Housing Development"; 24 CFR part 968, entitled "Public Housing Modernization"; and 24 CFR part 969, entitled "PHA-Owned Projects—Continued Operation as Low-Income Housing After Completion of Debt Service." In the case of part 969, which provides for the continued operation of housing as public housing for the 10-year period after the last receipt of operating subsidy, sections 9(e)(3) and 9(m) of the 1937 Act, along with the Annual Contributions Contract (ACC), as amended and approved by HUD, serve the same purpose, making the separate regulations in 24 CFR part 969 no longer necessary.

Although HUD established the CF formula in 2000, HUD continued to rely on CFP requirements found in the regulations in these other parts of 24 CFR, to the extent that these requirements were not superseded by statutory requirements.

III. Overview of the Changes to the PHA Annual Plan

This regulation modifies 24 CFR 903.3(a) to incorporate the definition of a qualified PHA provided in section 2702 of HERA. HERA exempts qualified PHAs from the requirement of section 5(A) of the 1937 Act to submit a PHA Annual Plan.

IV. This Proposed Rule

To meet the objective of revising and consolidating the requirements governing the use of Capital Funds, as discussed in Section II of this preamble, this proposed rule would revise 24 CFR part 905 to establish new subparts A through H.

A. Subpart A

Subpart A of this proposed part 905 would provide a general introduction and definitions. Section 905.100(a) and (b) would state the purpose of the part 905 regulations and provide a general description of the CFP. Section 905.100(c) would establish employment, contracting, and close-out requirements. Section 905.102 would address the applicability of the part 905 regulations. Section 905.104 would require that all HUD approvals be in writing from officials designated to grant such approvals. Section 905.106 would state that noncompliance with this part or any other applicable requirements may subject a PHA and its partners to sanctions provided elsewhere in part 905. Section 905.108 would provide a number of program-specific definitions.

The following are definitions relating to the Capital Fund Program and proposed to be included in the definition section of the part 905 regulations: "Additional Project Costs," "Accessible," "Capital Fund," "Capital Fund Annual Contributions Contract Amendment (CF ACC Amendment)," "Capital Fund Program Fee," "Community Renewal Costs," "Cooperation Agreement," "Date of Full Availability (DOFA)," "Emergency Work," "Expenditure," "Federal Fiscal Year (FFY)," "Force Account Labor," "Fungibility," "Housing Construction Cost (HCC)," "Line of Credit Control system (LOCCS)," "Mixed Finance Modernization," "Natural Disaster," "Obligation," "Open Grant," "Operating

Fund," "PIH Information Center (PIC)," "Public Housing Agency (PHA)," "Public Housing Project," "Public Housing Assessment System (PHAS)," "Public Housing Development," "Public Housing Requirements," "Reasonable Cost," "Reconfiguration," and "Uniform Federal Accessibility Standards (UFAS)." Other definitions specifically related to public housing development are proposed to be placed in subpart F, which will address development activities.

"Capital Fund Program Fee" is defined as the amount up to 10 percent of the annual Capital Fund grant under this regulation that may be set aside for administrative costs for an asset management PHA. These costs are associated with the Central Office Cost Center's (COCC) oversight and management of the CFP. These costs include duties related to general capital planning, preparing of the Annual Plan, processing of LOCCS, preparing reports, drawing of funds, budgeting, accounting, and procuring of construction and other miscellaneous contracts.

PHAs that have not converted to asset management may expend up to 10 percent of the Capital Fund grant on their administrative costs. Administrative costs exclude any costs related to lead-based paint or asbestos testing, in-house architectural or engineering work, or special administrative costs required under state or local law, unless approved by HUD.

"Reasonable cost" is defined in the regulation as "An amount to rehabilitate or modernize an existing structure that is not greater than 90 percent of the TDC for a new development of the same structure type, number and size of units in the same market area." Section 905.314(g), modernization cost limits, states that a PHA is prohibited from modernizing an existing public housing development that cannot be modernized for 90 percent of TDC. The Office of Public Housing uses other cost limitation standards for voluntary conversion and for Section 18 demolition. For mandatory conversion (24 CFR part 972 subpart B), which relates to developments of 250 or more dwelling units with a significant (15 percent) vacancy rate over 3 years, the cost standard is whether it is more expensive to operate the development as public housing than to provide tenant based assistance. For 24 CFR part 970, the description of major problems indicative of obsolescence includes a cost standard of 62 percent of TDC for elevator structure and 57.14 percent of TDC for all other types of structures. HUD is requesting that the public consider these varying cost limitations and provide the Department with comments on whether the standard of 90 percent of TDC, which is incorporated in this proposed rulemaking, is the best cost limitation to use for the modernization of existing public housing.

B. Subpart B

Subpart B would describe Capital Fund eligible activities and ineligible activities. Section 905.200 lists the eligible costs, which include, but are not limited to, development, financing, and modernization of public housing projects; capital planning; preparation of the annual statement; vacancy reduction; making units and common areas accessible; nonroutine maintenance; resident self sufficiency, security and safety; relocation and mobility counseling; costs for approved homeownership programs; conduct of an energy audit when there are not sufficient operating funds and the energy audit is part of a new modernization program for energy efficiency, including the use of Energy Star items; certain administrative costs; monitoring of LOCCS; the preparation of reports; the new Capital Fund program fee that can be attributed to the Central Office Cost Center; and emergency activities.

This proposed rule would incorporate energy standards at §§ 905.200(b)(6)(ii), 905.200(b)(14), 905.312(b)(1), 905.312(c)(3), 905.312(d), 905.314(c), and 905.316(e). The standards include those in 42 U.S.C. 12709 as amended by section 153 of the Energy Policy Act of 2005, Public Law 109–58 (these standards include the 2006 International Energy Conservation Code and ASHRAE 90.1–2004), and the Energy Star requirement for appliances in section 152 of the Energy Policy Act of 2005. In addition, § 905.200(b)(14) of this proposed rule incorporates energy efficiency standards from 42 U.S.C. 1437g(d)(1)(K), as added by section 151 of the Energy Policy Act of 2005, which makes it an eligible use of the capital fund to increase energy efficiency by such means as the Secretary of HUD determines are appropriate. Public comment is sought as to how energy efficiency should be measured, as well as what specific uses of the Capital Fund would increase energy efficiency.

Since HERA removed the authorization of the emergency set-aside under section 9(k) of the 1937 Act (42 U.S.C. 1437g(k)), this proposed rule would remove the regulatory provisions related to section 9(k).

Proposed § 905.202 would list the activities and costs that would be ineligible under the CFP. These include, but are not limited to, costs not included in the PHA's CFP 5-Year Action Plan; luxury items such as amenities beyond what is customary in the community; costs that would be eligible but for the fact that they are in excess of the amount directly attributable to the public housing units, when the physical or management improvement will benefit programs other than public housing; direct provision of social services; costs that are funded by another source, so there would be duplicate funding; and any other costs that HUD may determine on a case-by-case basis.

Proposed § 905.204 would include regulations on funding for emergencies and natural disasters. Under this section, HUD will look to ensure, in both situations, that a PHA uses other legally available funds, including unobligated Capital Funds, before using funds from the set-aside for disasters and emergencies. Disasters and emergencies are, however, by nature unexpected and unpredictable, so it is also necessary for HUD to exercise case-by-case discretion to ensure that disaster needs and other housing needs of the PHA's residents are and will continue to be met. It should be noted that both HUD's 2009 (Title II, Pub. L. 111–8) and 2010 (Division A, Title II, Pub. L. 111–117) Appropriations Acts made a limited amount of Capital Funds available for emergencies and natural disasters, and specifically excluded Capital Funds from being used for Presidentially declared disasters under the Stafford Act (42 U.S.C. 5121 *et seq.*). *See also* PIH Notice 2010–14, available at *http://www.hud.gov/offices/pih/publications/notices/10/pih2010-14.pdf*.

Former § 905.10(b), Emergency Reserve and Use of Amounts, would be removed from the proposed rule. The Capital Fund formula, which was previously found in § 905.10, is in § 905.400 of this proposed rulemaking. However, this proposed rule retains the procedures for awarding emergency and natural disaster grants, if provision is made for a set-aside for emergencies and natural disasters in an annual Appropriations Act.

C. Subpart C

Subpart C of this proposed rule would include the CFP requirements found in 24 CFR part 968 (public housing modernization) and 24 CFR 905.120 (penalties for slow expenditure or obligation of Capital Funds), as those sections are codified as of the date of this proposed rule. This rule would

establish CFP submission requirements for both qualified and nonqualified PHAs, as defined in Title VII of HERA section 2702. Submission requirements include, but are not limited to, the Physical Needs Assessment (PNA), the budget, and various certifications.

The new requirement for project-based PNAs for all properties in the PHA's inventory is intended to support effective property-based planning and the transition to asset management. Completion of the PNA will provide PHAs with critical information on the physical condition of each project in its inventory and assist the PHAs to identify and prioritize work items in the Annual Statement and the 5-Year Action Plan. The proposed rule would require that the PNA be completed by the PHA and be submitted to the Field Office at a time required by HUD.

The proposed rule would require that the other CFP submission requirements, including the budget and the certifications, be submitted in a format prescribed by HUD at the time that the PHA submits its signed CFP ACC Amendment for its CFP grant(s). Except in the case of emergency work, the PHA shall not spend Capital Funds on any work that is not included in an approved CFP 5-Year Action Plan and any approved amendments. Proposed § 905.300(b)(5) describes HUD review of the CFP submissions for compliance with the public housing program requirements. The PHA's budget must be approved by the PHA's Board of Commissioners, but does not require HUD approval. The CFP 5-Year Action Plan, which is a component of the 5-Year Plan required under part 903, continues to be required for all PHAs, both qualified and nonqualified.

Proposed § 905.300(b)(8) would address performance and evaluation reports. Proposed § 905.300(b)(4) would govern other formal requirements for qualified and nonqualified PHAs, such as the requirement that the PHA consult with the Resident Advisory Board(s) and conduct annual public hearings.

Proposed § 905.302 would require PHAs to submit the CF ACC Amendment by a specified date. Late submittal does not affect a PHA's requirement to obligate and expend its Capital Fund by the dates established by HUD. If HUD does not receive the signed and dated CF ACC Amendment by the submission deadline, the PHA will receive the Capital Fund grant for that year; however, the PHA will have less than 24 months to obligate 90 percent of the Capital Fund grant and less than 48 months to expend those funds, because the PHA's obligation start date and disbursement end date for these grants will remain as previously established by HUD.

Proposed § 905.304 requires public housing developed or modernized with Capital Funds to be operated in accordance with the CF ACC Amendment. Under proposed § 905.304(a)(1), projects developed with Capital Funds must have a covenant requiring them to be operated as public housing for a 40-year period beginning on the date on which the project becomes available for occupancy, as required by section 9(d)(3)(A) of the 1937 Act (42 U.S.C. 1437g(d)(3)(A)). Under proposed § 905.304(a)(2), projects modernized with Capital Funds will have an additional use restriction for a 20-year period that begins on the latest date that modernization is completed, as required by section 9(d)(3)(B) of the 1937 Act (42 U.S.C. 1437g(d)(3)(B)). Under proposed § 905.304(a)(3), projects developed that receive Operating Fund assistance shall generally have a covenant to operate under requirements applicable to public housing for a 10-year period beginning upon the conclusion of the fiscal year for which such amounts were provided. In accordance with the ACC, existing Declarations of Trust, and section 30 of the 1937 Act (42 U.S.C.1437z–2), proposed § 905.304(b) imposes a HUD approval requirement on any potential liens or security interests in public housing assets.

The requirements for obligation and expenditure of Capital Funds would be in proposed § 905.306. These requirements include the statutory time limits on expenditure found in section 9(j) of the 1937 Act (42 U.S.C. 1437g(j)), as well as penalties for failure to obligate Capital Funds in a timely manner. This section also provides information on the criteria for requesting an extension to the obligation deadline.

Section 905.308 would list federal requirements applicable to all Capital Fund modernization, development, and financing activities, including, but not limited to, relocation of residents, wage rates, environmental requirements, section 504 compliance, and lead-based paint poisoning prevention.

Proposed § 905.310 would require that the PHA initiate a fund requisition from HUD only when the funds are due and payable, unless HUD authorizes another method of payment of such advances, which includes working capital advances, or reimbursement as authorized by 24 CFR 85.21.

Proposed § 905.312 would incorporate the design and construction requirements, which are currently found in 24 CFR 941.203. The standards in proposed § 905.312(a) are similar to those in currently codified 24 CFR 941.203(a), with the primary difference being that the proposed § 905.312 would require structures "to be consistent with" the neighborhoods they occupy, rather than requiring them to "improve or harmonize with" the neighborhoods.

Additionally, proposed § 905.312, like currently codified § 941.203(b), would require that all development comply with a national building code in addition to the applicable state and local laws, codes, ordinances, and regulations. The proposed rule also specifically addresses accessibility requirements among the federal requirements with which compliance is required at proposed § 905.312(b)(4). The proposed rule would apply design and construction standards to modernization, as well as to development, in proposed § 905.312(c).

In § 905.312(c)(3), HUD refers to including cost-effective energy conservation measures as identified in the PHA's most recent updated energy audit in the design, rehabilitation and construction of public housing development. The Department is seeking public comment, particularly from PHAs, on what cost-effectiveness test(s) should be used when deciding whether an energy conservation measure identified in the energy audit should be implemented or not. Issues for public comment include but are not limited to the following:

(1) The measurement basis for cost effectiveness; *i.e.,* whether to use the total cost of the energy improvement versus the incremental cost of the energy improvement;

(2) Are opportunity costs figured into this calculation (*e.g.,* the incremental cost of the energy improvement versus the cost of various alternative uses of the money);

(3) Do such calculations include any expected increase in energy costs; and

(4) The period of time over which the cost of the improvement would be realized, such as the manufacturer's estimated useful life versus actual time in service.

Your comments will assist HUD to develop important guidance to PHAs that will assist them in determining the most cost-effective energy conservation measures to fund from among the many identified in the PHAs' respective energy audits.

Proposed § 905.314 establishes cost limits for public housing projects, including details about how the TDC and housing construction cost (HCC) limits are calculated. Modernization costs are limited to 90 percent of the TDC; if modernization costs exceed that

limit, the project will not be modernized. Also proposed in § 905.314(c)(1) is the ability for PHAs to request a TDC exception for integrated utility management, capital planning, and other capital and management activities that maximize energy conservation and efficiency, including green construction and retrofits, which include windows; heating system replacements; wall insulation; site-based generation; advanced energy savings technologies, including renewable energy generation; and other such retrofits. HUD has the statutory authority to grant such a TDC exception pursuant to 42 U.S.C. 1437d(b).

For TDC exceptions for integrated utility management, capital planning, and other capital and management activities that maximize energy conservation and efficiency identified in § 905.314(c)(1), the Department will require that the requesting PHA submit a detailed list of the planned energy conservation improvements, an explanation and justification for the proposed energy conservation improvements, and the estimated costs for HUD review. In addition, PHAs requesting an exception of the TDC will be required to submit to HUD an independent cost certification from a third party such as a licensed accredited architect. These materials will be reviewed by HUD and approved on a case-by-case basis. The Department is seeking public comment on what cost effectiveness test(s) HUD should apply when reviewing TDC requests for this exception.

Proposed § 905.314(h) sets administrative cost limits for modernization at 10 percent of the annual Capital Fund grant, excluding costs related to lead-based paint or asbestos testing, in-house architectural or engineering work, or other special administrative costs, unless approved by HUD. Proposed § 905.314(h) sets the administrative cost limits for development work with Capital Fund and RHF grants at 3 percent of the total project budget or, with HUD's approval, up to 6 percent of the total project budget. For a PHA that is under asset management, this administrative cost limit of 10 percent includes the Capital Fund Program fee. This limitation reflects the priority HUD places on use of the Capital Fund for development and modernization.

Proposed § 905.314(j) proposes to reduce the threshold for management improvements from 20 percent to 10 percent over a 3-year period. Under the current CFP a large housing authority (a PHA with 250 or more units in management) could use as much as 50 percent of a Capital Fund (CF) formula grant (*i.e.,* 20 percent for management improvements, 10 percent for administrative costs, and up to 20 percent for operations) for costs not associated with physical improvements of the development. The Department will not be able to fund the estimated modernization needs (as determined in the Capital Needs of the Public Housing Stock in 1998: Formula Capital Study) if such a high percentage of the Capital Fund appropriation is used for purposes other than modernization or development of public housing units. When CGP was established more than 20 years ago, the Department established a threshold to allow for 20 percent of the Capital Fund grant to be used to fund resident activities and other administrative expenses needed to support the physical improvements funded by the modernization program. Since the initiation of the CIAP and CGP, other programs such as the Resident Opportunities and Supportive Services (ROSS) program and Community and Supportive Services, a component of the HOPE VI program, have been established to fund services that enable residents to become self sufficient and/or improve their quality of life. In addition to these programs, section 9(g) of the 1937 Act (42 U.S.C. 1437g(g)) allows large PHAs to use up to 20 percent of a Capital Fund grant for operating costs, while small PHAs have complete flexibility to use their entire Capital Fund grant for operating costs (§ 905.314(l) of this proposed rule). With this flexibility to use Capital Fund for operations, it is no longer necessary to have such a high threshold for funding management improvements.

Proposed § 905.314(k) covers resident management corporation (RMC) activities. RMCs are authorized under section 20 of the 1937 Act (42 U.S.C. 1437r). Under section 20(c) of the 1937 Act (42 U.S.C. 1437r(c)), a PHA may provide a portion of its Capital Funds to an RMC for the purpose of performing eligible activities (under certain conditions, RMCs can be directly funded without going through the PHA (see 42 U.S.C. 1437r(e)). The proposed rule would provide that the PHA will not retain any of the Capital Funds unless the PHA contractually agrees to do so with the RMC.

Proposed § 905.314(j) provides for the HUD-approved use of force account labor. High-performing PHAs would not require HUD approval for this purpose.

Proposed § 905.316 of the proposed rule establishes contracting requirements. This section generally requires compliance with 24 CFR 85.36. Proposed § 905.316(d) requires that, notwithstanding the bonding requirements of 24 CFR 85.36(h), for each contract over $100,000, the contractor shall provide a bid guarantee equivalent to 5 percent of the bid price plus one of five acceptable forms of bond listed.

Section 905.318 of the proposed rule would require the PHA to obtain a title insurance policy before taking title to any and all sites and properties acquired with Capital Funds. Section 905.318 also would require recordation of the deed as prescribed by HUD.

Proposed § 905.320 would impose contract administration duties on the PHA for work performed using Capital Funds. The PHA must inspect the work and determine when it is acceptable, and shall pay a contractor only for work that the PHA has inspected and accepted.

Proposed § 905.322 would require that the fiscal closeout of a Capital Fund project requires the submission of a cost certificate; and an audit, if applicable. Proposed § 905.322 also would require the submission of a performance and evaluation (P&E) report that describes the progress on open Capital Fund grants, which is currently required by 24 CFR 968.330. If the PHA does not submit the cost certificate and P&E report in a timely manner as specified in the regulation, HUD may, after notifying the PHA, impose restrictions on the PHA's Capital Fund grants. Proposed § 905.322(c) would provide that the cost certificate is also subject to audit. For PHAs that are exempt from audit, HUD would review and approve the cost certificate based on available information regarding the Capital Fund grant. Proposed § 905.322(e) would provide that all Capital Funds in excess of the actual cost incurred for the grant are subject to recapture.

Proposed § 905.324 would require certain data reporting by PHAs.

Proposed § 905.326 would require PHAs to keep full and complete records of each Capital Fund grant.

D. Subpart D

Subpart D would incorporate, in proposed § 905.400, the regulations that establish the CF formula, currently codified in § 905.10, with the exception of reference to the emergency reserve fund, which was removed by HERA, as discussed above.

The CF formula was initially established by final rule published on March 16, 2000 (65 FR 14422), and that formula is not proposed to be changed by this rule. Terminology would be updated to reflect the change to asset management and project-level accounting. In April 2008, PIC was

realigned to reflect the reorganization of developments into projects. In order to avoid resulting changes in DOFA dates that otherwise could have affected certain PHAs, § 905.400 (d)(6) of this rule proposes to freeze the determination of modernization need as of FFY 2008 and then make adjustments based on changes in inventory. The end result is that there is no substantive change to the formula or the resulting allocation of Capital Funds, and hence the formula, which was originally established through a statutory negotiated rulemaking process, is presented here for the sake of completeness only and not for public comment. However, HUD will accept comment on the aforementioned technical changes reflecting asset management.

Since the Study of the Modernization Needs of the Public and Indian Housing Stock, prepared by Abt Associates Inc., in 1988, the Department has demolished more than 100,000 units of severely distressed public housing and funded a significant amount of modernization in public housing. Subsequently, the Department has already funded 10 years of replacement housing grants for the severely distressed public housing that was removed from the public housing inventory. Section 905.400(j) proposes a transition from a 10-year-long RHF program to a 5-year RHF program for PHAs that remove units from the inventory based on demolition or disposition. The transition to a 5-year RHF program would be effective in FFY 2011 for PHAs that removed units from the inventory in FFY 2010. In FFY 2011, any PHA that began receiving RHF in FFY 2010 based on demolition or disposition that occurred in FFY 2009 and earlier will receive the remainder of its first increment and be eligible for a second increment. Subsequently, PHAs that are already receiving RHF funding in FFY 2011 will not be negatively impacted by the transition because they will receive the total 10 years of RHF funding and will be eligible to receive RHF funding for units removed from inventory for the sale of homeownership as described in § 905.400(j)(1). Also, beginning in FFY 2011, PHAs will be eligible to receive RHF funding for units removed from inventory for the sale of homeownership as described in § 905.400(j)(1) and be allowed to use RHF grants to fund development of either public housing rental or homeownership units. The Department is soliciting comments from PHAs and the PHA interest groups on this proposal to change the RHF funding.

Proposed § 905.400(k) provides for a performance award factor similar to currently codified § 905.10(j). The provisions of currently codified § 905.10(k) on eligible costs would be moved to proposed § 905.200.

E. Subpart E

Subpart E would address the use of Capital Funds for financing. This subpart is reserved for the regulation entitled "Use of Public Housing Capital and Operating Funds for Financing Activities" that is the subject of a separate rulemaking. (*See* final rule published on October 21, 2010, at 75 FR 65198.)

F. Subpart F

Subpart F would contain the development requirements, including those related to mixed-finance projects. These requirements would be moved to subpart F from 24 CFR part 941. Program requirements including the limitation on costs and site and neighborhood standards are described in § 905.602. The Department has not made any substantive changes to the site and neighborhood standards found at § 941.202. Definitions specifically related to public housing development are found in § 905.604(b). This subpart also proposes certain deviations from applicable requirements as HUD is permitted to do by regulation in the case of mixed-finance projects under section 35(h) of the 1937 Act, 42 U.S.C. 1437z–7(h). Section 905.604(l), which pertains to closing materials and other documents, and § 905.604(m), which addresses subsidy layering, are reserved to address the revised regulations that are the subject of the rulemaking entitled "Streamlining of Mixed Finance Applications," which was published as a proposed rule in the **Federal Register** on December 27, 2006. Development, with regards to homeownership, will be addressed by a separate rulemaking.

G. Subpart G

Subpart G would state that the PHA may not pledge, mortgage, or enter into a transaction that uses public housing assets without written HUD approval.

H. Subpart H

Subpart H would address PHA compliance with Capital Fund requirements, and HUD review and sanction for noncompliance with HUD contracts and regulations.

V. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and given OMB control numbers 2577–0157 and 2577–0226. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

Regulatory Planning and Review

OMB reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). This rule was determined to be a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order).

The rule would not have any direct financial impact on the level of funding for the CFP, but has the potential to create some financial transfers among program participants. However, the total amount of transfer is estimated to be less than $100 million annually.

The rule would gradually phase down the dollar threshold for management improvements, from up to 20 percent to up to 10 percent of a PHA's CF formula grant over a period of 3 fiscal years. On average, PHAs use approximately 8 percent of their Capital Fund grants on management improvements, with many PHAs using considerably less and large PHAs of more than 250 units using 9 percent. In 2008, $2.38 billion in formula funds were distributed to PHAs. If all PHAs were using the full 20 percent permitted under the current rule, a 10 percent reduction in the management improvement threshold would indicate that about $238 million would be reprogrammed for other eligible activities and would constitute a transfer from one group of stakeholders that traditionally received management improvement funds, to other CFP eligible activities and stakeholders, without any impact on funding. However, given that the actual rate of usage is below 10 percent, this program requirement would not result in any transfers.

The rule would also phase down the allocation of funds for the RHF from a 10-year RHF to a 5-year RHF. In 2008, a total of 294 PHAs received RHF funds. That year, 251 PHAs funded under the CF formula received $97,936,944 RHF first increment funding, and 123 PHAs received $112,825,095 RHF second increment funding. Five years after the implementation of the RHF phase-down, the $113 million second increment funding would be eliminated and redistributed by formula to all 3,138 eligible PHAs, creating a transfer, but

one only among PHAs. However, HUD has already funded more than 10 years of RHF to assist PHAs that demolished over 100,000 units of severely distressed public housing; thus, the need for RHF has significantly decreased. The phase-down also grandfathers all PHAs that are receiving first- or second-increment RHF as of Fiscal Year (FY) 2010, minimizing the impact.

This rule, if implemented as proposed, would also have significant benefits. This rule updates and consolidates the CFP regulations and related regulations having to do with the use of Capital Funds for development and modernization, as well as regulations for continuing operation of low-income housing after completion of debt service. In addition, the rule proposes to codify recent statutory requirements enacted in HERA. The benefits of the rule such as regulatory consolidation, program clarification, removal of obsolete references, and enhanced efficiencies make the rule necessary. Although HUD established the CF formula in 2000, HUD has continued to rely on CFP requirements to the extent that these requirements were not superseded by statutory requirements.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. This rule does not impose any federal mandate on any state, local, or tribal government or the private sector within the meaning of UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Finding of No Significant Impact is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the docket file must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule reflects the transition from PHA-wide accounting to an asset management model, and therefore changes some of the language regarding the CF formula to reflect the new accounting model. The only significant change in the CF formula calculation is a proposal to limit the number of years a PHA is eligible to receive RHF grants to replace units removed from the inventory by demolition, disposition, or homeownership, from 10 years to 5 years. The CF formula amount that is freed up because of fewer RHF grants will cause an increase in the amount of Capital Funds available to the remainder of the PHAs, which includes a large number of small PHAs. Since most small PHAs do not demolish or dispose of a significant number of public housing units, reducing RHF eligibility to 5 years should benefit small PHAs. Therefore, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

Notwithstanding the determination that this rule would not have a significant impact on a substantial number of small entities, HUD specifically invites any comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance numbers for 24 CFR parts 905, 941, 968, and 969 are 14.850, 14.872, 14.882, 14.883.

List of Subjects

24 CFR Part 903

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 905

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

24 CFR Part 968

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 969

Grant programs—housing and community development, Low and moderate income housing, Public housing.

Accordingly, for the reasons stated in the preamble, under the authority of 42 U.S.C. 3535(d), HUD proposes to amend 24 CFR chapter IX as follows:

PART 903—PUBLIC HOUSING AGENCY PLANS

1. The authority citation for part 903 is revised to read as follows:

Authority: 42 U.S.C. 1437c; 42 U.S.C. 1437c–1; Pub. L. 110–289; 42 U.S.C. 3535d.

2. Revise § 903.3 to read as follows:

§ 903.3 What is the purpose of this subpart?

(a) This subpart specifies the requirements for PHA plans, required by section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1) (the Act), as amended.

(b) Title VII of the Housing and Economic Reform Act, Public Law 110–289, section 2702, amends 42 U.S.C. 1437c–1(b) to provide qualified public housing agencies (PHAs) an exemption from the requirement of section 5A of the Act to submit an annual PHA Plan. The term "qualified public housing

agency" has the meaning stated in section 2702(a)(3)(C) of Pub. L. 110–289. HUD will make available a list of the qualified PHAs on a quarterly basis.

3. Revise part 905 to read as follows:

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

Subpart A—General

Subpart B—Eligible Activities

Subpart C—General Program Requirements

Subpart D—Capital Fund Formula

Subpart E—Use of Capital Funds for Financing [Reserved]

Subpart F—Development Requirements

Subpart G—Other Security Interests

Subpart H—Compliance, HUD Review, Penalties, and Sanctions

Authority: 42 U.S.C. 1437g and 3535(d); Pub. L. 110–289.

Subpart A—General

§ 905.100 Purpose, general description, and other requirements.

(a) *Purpose.* The Public Housing Capital Fund Program (Capital Fund Program or CFP) provides financial assistance to public housing agencies (PHAs) and resident management corporations (RMC) (pursuant to 24 CFR 964.225) to make improvements to existing public housing. The CFP also provides financial assistance to develop public housing, including mixed-finance developments that contain public housing units.

(b) *General description.* Congress appropriates amounts for the Capital Fund in HUD's annual appropriations. In order to receive a Capital Fund grant, the PHA must:

(1) Validate project-level information in HUD's data systems, as prescribed by HUD;

(2) Have an approved CFP 5-Year Action Plan;

(3) Enter into a Capital Fund Annual Contributions Contract (CF ACC) Amendment to the PHA's Annual Contributions Contract (as defined in 24 CFR 5.403) with HUD; and

(4) Provide a written certification and counsel's opinion that all property receiving Capital Fund assistance is under a currently effective Declaration of Trust and is in compliance with the CF ACC and the Act.

(c) *Informational requirements.* Section 905.300 of this part describes the information to be submitted to HUD for the CFP. HUD uses the Capital Fund formula set forth in § 905.400 of this part, along with data provided by the PHA and other information, including, but not limited to, the High Performance information from the Real Estate Assessment Center (REAC) and location cost indices, to determine each PHA's annual grant amount. HUD notifies each PHA of the amount of the grant and provides a CF ACC Amendment that must be signed by the PHA and executed by HUD in order for the PHA to access the grant. After HUD executes the CF ACC Amendment, the PHA may draw down funds for eligible costs that have been described in its CFP Annual Statement/Performance and Evaluation Report or CFP 5-Year Action Plan.

(d) *Eligible activities.* Eligible Capital Fund costs and activities as further described in subpart B of this part include, but are not limited to, making physical improvements to the public housing stock and developing public housing units to be added to the existing inventory. With HUD approval, a PHA may also leverage its public housing inventory by borrowing additional capital on the private market and pledging a portion of its annual Capital Funds for debt service in accordance with § 905.500.

(e) *Obligation and expenditure requirements.* A PHA must obligate and expend its Capital Funds in accordance with § 905.306. The PHA will directly employ labor, either temporarily or permanently, to perform work (force account) or contract for the required work in accordance with 24 CFR part 85. Upon completion of the work, the PHA must submit an Actual Modernization Cost Certificate (AMCC) or Actual Development Cost Certificate (ADCC) and a final Performance and Evaluation Report (in accordance with § 905.322) to HUD to close out each Capital Fund grant.

(f) *Financing and development.* Section 905.500 of this part regulates financing activities using Capital Funds and Operating Funds. Section 905.600 of this part contains the development requirements, including those related to mixed-finance development formerly found in 24 CFR part 941. Section 905.700 of this part describes the criteria for the use of Capital Funds for other security interest. Section 905.800 of this part addresses PHA compliance with Capital Fund requirements and HUD capability for review and sanction for noncompliance.

§ 905.102 Applicability.

All PHAs that have public housing units under an Annual Contributions Contract as described in 24 CFR 5.403 are eligible to receive Capital Funds.

§ 905.104 HUD approvals.

All HUD approvals required in this part must be in writing and from an official designated to grant such approval.

§ 905.106 Compliance.

PHAs or owner/management entities or their partners are required to comply with all applicable provisions of this part. Execution of the CF ACC Amendment, submissions required by this part, and disbursement of Capital Fund grants from HUD are individually and collectively deemed to be the PHA's certification that it is in compliance with the provisions of this part and all other Public Housing Program Requirements. Noncompliance with any provision of this part or other applicable requirements may subject the PHA and/or its partners to sanctions contained in § 905.804.

§ 905.108 Definitions.

The following definitions apply to this part:

1937 Act. The term "1937 Act" is defined in 24 CFR 5.100.

Accessible. As defined in 24 CFR 8.3.

Additional Project Costs. The sum of the following HUD-approved costs related to the development of a public housing project:

(1) Costs for the demolition or remediation of environmental hazards associated with public housing units that will not be rebuilt on the original site; and

(2) Extraordinary site costs that have been verified by an independent state registered, licensed engineer (*e.g.,* removal of underground utility systems; replacement of off-site underground utility systems; extensive rock and/or soil removal and replacement; and amelioration of unusual site conditions such as unusual slopes, terraces, water catchments, lakes, etc.). These costs are not subject to the Total Development Cost (TDC) limit, but are included in the maximum project cost as stated in § 905.314(b).

Capital Fund (CF). The fund established under 42 U.S.C. 1437g(d).

Capital Fund Annual Contributions Contract Amendment (CF ACC). A contract under the 1937 Act between HUD and the PHA containing the terms and conditions under which the Department assists the PHA in providing decent, safe, and sanitary housing for low-income families. The CF ACC must be in a form prescribed by HUD, under which HUD agrees to provide assistance in the development, modernization, and/or operation of a low-income housing project under the 1937 Act and the PHA agrees to modernize and operate the project in compliance with all Public Housing Requirements.

Capital Fund Program Fee. The Capital Fund Program Fee covers costs associated with the Central Office Cost Center's (COCC) oversight and management of the Capital Fund Program. These costs include duties related to general capital planning, preparing of the Annual Plan, processing of the Line of Credit Control System (LOCCS), preparation of reports, drawing of funds, budgeting, accounting, and procurement of construction and other miscellaneous contracts. The Capital Fund Program Fee is the administrative cost for managing Capital Fund grants for PHAs subject to asset management, which is subject to the regulatory limitation of 10 percent of the annual capital fund grant.

Community Renewal Costs. Public housing capital assistance may be used to pay for Community Renewal Costs in an amount equivalent to the difference between the Housing Construction Costs (HCCs) paid for with public housing capital assistance and the TDC limit.

Cooperation Agreement. An agreement, in a form prescribed by HUD, between a PHA and the applicable local governing body or bodies that assures exemption from real and personal property taxes, provides for local support and services for the development and operation of public housing, and provides for PHA payments in lieu of taxes (PILOT).

Date of Full Availability (DOFA). The last day of the month in which substantially all (95 percent or more) of the units in a public housing project are available for occupancy.

Emergency Work. Capital Fund related physical work items that if not done pose an immediate threat to the health or safety of residents, and which must be completed within one year of funding. Management Improvements are not eligible as emergency work and therefore must be covered by the CFP 5-Year Action Plan before the PHA may carry them out.

Expenditure. Capital Funds disbursed to the PHA to pay for obligations incurred in connection with work included in a HUD approved CFP 5-Year Action Plan. Total funds expended means cash actually disbursed and does not include retainage.

Federal Fiscal Year (FFY). The Federal Fiscal Year begins each year on October 1 and ends on September 30 of the following year.

Force Account Labor. Labor employed directly by the PHA on either a permanent or a temporary basis.

Fungibility. As it relates to the Capital Fund Program, fungibility allows the PHA to substitute work items between any of the years within the latest approved CFP 5-Year Action Plan, without prior HUD approval.

Housing Construction Cost (HCC). The sum of the following HUD-approved costs related to the development of a public housing project: Dwelling unit hard costs (including construction and equipment), builder's overhead and profit, the cost of extending utilities from the street to the public housing project, finish landscaping, and the payment of Davis-Bacon wage rates.

Line of Credit Control System (LOCCS). LOCCS-Web is an intranet version of LOCCS for HUD personnel. eLOCCS is the Internet link to LOCCS data for HUD business partners.

Mixed-Finance Modernization. Use of the mixed-finance method of development to modernize public housing projects.

Natural Disaster. An extraordinary event, affecting only one or few PHAs, but excluding Presidentially declared emergencies and major disasters under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*

Obligation. A binding agreement for work or financing that will result in outlays, immediately or in the future. All obligations must be incorporated within the HUD-approved CFP 5-Year Action Plan. This includes funds obligated by the PHA for work to be performed by contract labor (*i.e.,* contract award), or by force account labor (*i.e.,* work actually started by PHA employees). Capital Funds identified in the PHA's CFP 5-Year Action Plan to be transferred to operations are obligated by PHAs once the funds have been budgeted and drawn down by the PHA. Once these funds are drawn down they are subject to the requirements of 24 CFR part 990.

Open Grant. Any grant for which a cost certificate has not been submitted and has not reached fiscal closeout as described in § 905.322.

Operating Fund. Assistance provided under 24 CFR part 990 pursuant to section 9(e) of the 1937 Act (42 U.S.C. 1437g(e)) for the purpose of operation and management of public housing.

PIH Information Center (PIC). PIH's current system for recording data concerning: The public housing inventory, the characteristics of public housing and Housing Choice Voucher assisted families, the characteristics of PHAs, and performance measurement of housing authorities receiving Housing Choice Voucher funding.

Public Housing Agency (PHA). Any State, county, municipality, or other governmental entity or public body or agency or instrumentality of these entities that is authorized to engage or assist in the development or operation of public housing under this part.

Public Housing Assessment System (PHAS). The assessment system under 24 CFR part 902 for measuring the properties and PHA management performance in essential housing operations, including rewards for strong performers and consequences for poor performers.

Public Housing Development. Any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment in connection with a public housing project.

Public Housing Project. The term "public housing" means low-income housing, and all necessary appurtenances thereto, assisted under the 1937 Act, other than Section 8. The term "public housing" includes dwelling units in a mixed-finance project that are assisted by a public housing agency

with Capital Fund or Operating Fund assistance. When used in reference to public housing, the term "project" means housing developed, acquired, or assisted by a public housing agency under the 1937 Act, and the improvement of any such housing.

Public Housing Requirements. All requirements applicable to public housing including, but not limited to, the 1937 Act; HUD regulations; the CF ACC, including amendments; HUD notices; and all applicable federal statutes, executive orders, and regulatory requirements, as these requirements may be amended from time to time.

Reasonable cost. An amount to rehabilitate or modernize an existing structure that is not greater than 90 percent of the TDC for a new development of the same structure type, number, and size of units in the same market area. Reasonable costs are also determined with consideration of HUD regulations including 24 CFR part 85 and OMB Circular A–87.

Reconfiguration. The altering of the interior space of buildings (*e.g.,* moving or removing interior walls to change the design, sizes, or number of units) without demolition, as defined in 24 CFR 970.5.

Uniform Federal Accessibility Standards (UFAS). As defined in 24 CFR 8.32.

Subpart B—Eligible Activities

§ 905.200 Eligible activities.

(a) *General.* Eligible activities include only items specified in an approved CFP 5-Year Action Plan as identified in § 905.300, or approved by HUD for emergency and natural disaster assistance.

(b) *Eligible activities.* Eligible activities include the development, financing, and modernization of public housing projects, including the redesign, reconstruction, and reconfiguration of public housing sites and buildings (including accessible design and construction of accessibility improvements) and the development of mixed-finance projects, including the following:

(1) *Modernization.* Modernization means the activities identified in § 905.200(a), except those activities associated with the development of public housing;

(2) *Development.* Development refers to activities and related costs to add units to a PHA's public housing inventory under § 905.600, including: Construction and acquisition with or without rehabilitation; any and all undertakings necessary for planning, design, financing, land acquisition, demolition, construction, or equipment, including development of public housing units, and buildings, facilities, and/or related appurtenances (*i.e.,* nondwelling facilities/spaces). Development of mixed-finance projects include the provision of public housing through a regulatory and operating agreement, master contract, individual lease, condominium or cooperative agreement, or equity interest.

(3) *Financing.* Debt and financing costs (*e.g.,* origination fees, interest) incurred by PHAs for development or modernization of PHA projects that involves the use of Capital Funds, including, but not limited to:

(i) Mixed Finance as described in § 905.604;

(ii) The Capital Fund Financing Program (CFFP) as described in § 905.500; and

(iii) Any other use authorized by the Secretary under section 30 of the 1937 Act (42 U.S.C. 1437).

(4) *Vacancy reduction.* Physical improvements to reduce the number of units that are vacant. Not included are costs for routine vacant unit turnaround such as painting, cleaning, and minor repairs. Vacancy reduction activities must be remedies to a defined vacancy problem detailed in a vacancy reduction program included in the PHA's CFP 5-Year Action Plan.

(5) *Nonroutine maintenance.* Work items that ordinarily would be performed on a regular basis in the course of maintenance of property, but have become substantial in scope because they have been postponed and involve expenditures that would otherwise materially distort the level trend of maintenance expenses. These activities also include the replacement of obsolete utility systems and dwelling equipment.

(6) *Planned code compliance.* Building code compliance includes design and physical improvement costs associated with:

(i) Correcting violations of local code or the Uniform Physical Condition Standards (UPCS) under the Public Housing Assessment System (PHAS), and

(ii) A national building code, such as those developed by the International Code Council or the National Fire Protection Association; and the 2006 International Energy Conservation Code (IECC), or ASHRAE 90.1–2004 for multifamily high-rises (four stories or higher), or a successor energy code or standard that has been adopted by HUD pursuant to 42 U.S.C. 12709 or other relevant authority.

(7) *Management improvements.* Activities that are project-specific or PHA-wide noncapital improvements needed to upgrade the operation of the PHA's projects, including upgrading operations to maximize energy conservation to sustain physical improvements at those projects, or correct management deficiencies. Such activities include, but are not limited to, the following costs:

(i) Training for PHA personnel in operations and procedures;

(ii) Improvement of resident programs and services, including resident and project security, and resident selection and eviction;

(iii) Activities that assure or foster equal opportunity; and

(iv) Resident management costs not covered by the Operating Fund include, but are not limited to:

(A) The cost of technical assistance to a resident council or RMC to assess feasibility of carrying out management functions for a specific development or developments;

(B) The cost to train residents in skills directly related to the operation and management of the development(s) for potential employment by the RMC;

(C) The cost to train RMC board members in community organization, board development, and leadership; and the cost of the formation of an RMC; and

(D) When carrying out management improvement activities, the PHA shall give priority to correcting deficiencies under PHAS before expending Capital Funds on other management improvements, except for activities necessary to address emergency work or statutory or court-ordered deadlines.

(8) *Resident self-sufficiency.*

(i) Economic Self-Sufficiency Costs. These include costs for resident job training and resident business development activities to enable residents and their businesses to carry out Capital Fund-assisted activities. HUD encourages PHAs, to the greatest extent feasible, to hire residents as trainees, apprentices, or employees to carry out activities under this part, and to contract with resident-owned businesses as required by Section 3 of the Housing and Community Development Act of 1968, 12 U.S.C. 1701u.

(ii) Resident Participation Costs. These are costs that promote more effective resident participation in the operation of the PHA in its Capital Fund activities to the extent not covered by $25 per unit, per month, from the Operating Fund. They include costs for staff support, outreach, training, meeting and office space, childcare,

transportation, and access to computers that are modest and reasonable.

(iii) Economic Self-Sufficiency. Capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents.

(9) *Demolition and reconfiguration.*

(i) The costs to demolish dwelling units or nondwelling facilities approved by HUD, where required, and other related costs for activities such as relocation, clearing, and grading the site after demolition, and subsequent site improvements to benefit the remaining portion of the existing public housing property, as applicable.

(ii) The costs to develop dwelling units or nondwelling facilities approved by HUD, where required, and other related costs for activities such as relocation, clearing, and grading the site prior to development.

(iii) The costs to reconfigure existing dwelling units to units with different bedroom sizes or to a nondwelling use.

(10) *Resident relocation and mobility counseling.* Relocation and other assistance (*e.g.,* reasonable out-of-pocket expenses incurred in connection with temporary relocation, including the cost of moving to and from temporary housing and any increase in monthly rent/utility costs) for permanent or temporary relocation, as a direct result of modernization, development, rehabilitation, demolition, reconfiguration, or acquisition.

(11) *Security and safety.* Capital expenditures to improve the security and safety of residents.

(12) *Homeownership.* Activities associated with approved homeownership, such as:

(i) The cost of a study to assess the feasibility of converting rental to homeownership units and the preparation of an application for the conversion to homeownership or sale of units;

(ii) Construction or acquisition of units;

(iii) Downpayment assistance;

(iv) Closing cost assistance;

(v) Subordinate mortgage loans;

(vi) Construction or permanent financing such as write downs for new construction, or acquisition with or without rehabilitation; and

(vii) Other activities in support of the above primary homeownership activities, including but not limited to:

(A) Demolition to make way for new construction;

(B) Abatement of environmentally hazardous materials;

(C) Relocation assistance and mobility counseling;

(D) Homeownership counseling;

(E) Site improvements; or

(F) Administrative and marketing costs;

(13) *Capital Fund related legal costs* (*e.g.,* legal costs related to preparing property descriptions for the Declaration on Trust, zoning, permitting, environmental review, procurement, and contracting).

(14) *Energy efficiency.* Allowed costs include:

(i) Energy audit or updated energy audit to the extent operating funds are not available and the energy audit is included within a modernization program.

(ii) Integrated utility management and capital planning to maximize energy conservation and efficiency measures.

(iii) Energy conservation measures identified in a PHA's most recently updated energy audit.

(iv) Improvement of energy and water-use efficiency by installing fixtures and fittings that conform to the American Society of Mechanical Engineers/ American National Standards Institute standards A112.19.2–1998 and A112.18.1–2000, or any revision thereto, applicable at the time of installation, and by increasing energy efficiency and water conservation by such other means as the Secretary determines are appropriate.

(v) The installation and the use of Energy Star appliances whenever energy systems, devices, and appliances are replaced, unless it is not cost-effective to do so, in accordance with Section 152 of the Energy Policy Act of 2005, 42 U.S.C. 15841.

(vi) Utility and energy management system automation, and metering activities, including changing mastermeter systems if installed as a part of a modernization activity to upgrade utility systems, *e.g.* electric, water, or gas systems of the PHA consistent with the requirements of 24 CFR part 965.

(15) *Administrative costs.* Any administrative costs, including salaries and employee benefit contributions, other than the Capital Fund Program Fee, must be related to a specific public housing development or modernization project and detailed in the CFP 5-Year Action Plan.

(16) *Audit.* Costs of the annual audit attributable to the portion of the audit covering the CFP in accordance with § 905.322(c).

(17) *Capital Fund Program Fee.* This fee covers costs associated with oversight and management of the CFP attributable to the HUD-accepted COCC as described in 24 CFR part 990 subpart H. These costs include duties related to capital planning, preparing the CFP Annual Statement/Performance and Evaluation Report, preparing the CFP 5-Year Action Plan, monitoring of LOCCS, preparing reports, drawing of funds, budgeting, accounting, and procuring of construction and other miscellaneous contracts. This fee is not intended to cover costs associated with construction supervisory and inspection functions that are considered a front-line cost of the project.

(18) *Emergency activities.* Capital Fund related activities identified as emergency work, as defined in § 905.108, whether or not the need is indicated in the CFP 5-Year Action Plan.

§ 905.202 Ineligible activities and costs.

The following are ineligible activities and costs for the Capital Fund Program:

(a) Costs not associated with a public housing project or development, as defined in § 905.604(b)(1);

(b) Activities and costs not included in the PHA's CFP 5-Year Action Plan;

(c) Improvements or purchases that are not modest in design and cost because they include amenities, materials, and design in excess of what is customary for the locality;

(d) Any costs not authorized as outlined in OMB Circular A–87, codified at 2 CFR part 225, including, but not limited to, indirect administrative costs and indemnification;

(e) Public housing operating assistance, except as provided in § 905.314(l);

(f) Direct provision of social services through either force account or contract labor;

(g) Eligible costs that are in excess of the amount directly attributable to the public housing units when the physical or management improvements, including salaries and employee benefits and contributions, will benefit programs other than public housing, such as Section 8 housing choice voucher or local revitalization programs;

(h) Eligible cost that is funded by another source and would result in duplicate funding; and

(i) Any other activities and costs that HUD may determine on a case-by-case basis.

§ 905.204 Emergencies and natural disasters.

(a) *General.* PHAs are required by the CF ACC to carry various types of insurance to protect it from loss. In most cases, insurance coverage will be the primary source of funding to pay repair or replacement costs associated with emergencies and natural disasters. Where the Department's Annual

Appropriations Act requires a set aside from the Capital Fund appropriation for emergencies and natural disasters, the procedures in this section apply.

(b) *Estimate required.* An independent estimate of damage and repair cost is required as a part of the final natural disaster application. For natural disasters, the assessment must identify damage specifically caused by the natural disaster from other repairs. The set aside can be used only to pay costs to repair or replace a public housing project damaged as a result of the natural disaster, not for nonroutine maintenance or other improvements.

(c) *Emergencies and natural disasters.* An emergency is an unforeseen or unpreventable event or occurrence that poses an immediate threat to the health and safety of the residents that must be corrected within one year of funding. A natural disaster for purposes of the Capital Fund reserve is a non-Presidentially declared disaster. In the event an emergency or natural disaster arises, HUD may require a PHA to use any other source that may legally be available, including unobligated Capital Funds, prior to providing emergency or natural disaster funds from the set aside. The Department will review, on a case-by-case basis, requests for emergency and natural disaster funding from PHAs that have unobligated Capital Funds.

(d) *Procedure to request emergency or natural disaster funds.* To obtain emergency or natural disaster funds, a PHA shall submit a written request in the form and manner prescribed by HUD. In instances where the PHA requires immediate relief to preserve the property and safety of the residents, the PHA may submit a preliminary request outlined in § 905.204(f). Subsequently, the PHA is required to complete and submit the remaining information outlined in § 905.204(g), at a time prescribed by HUD.

(e) *Procedure to request preliminary natural disaster grant for immediate preservation.* A PHA may request a preliminary grant only for costs necessary for immediate preservation of the property and protection of the residents. The application should include the reasonable identification of damage and preservation costs as determined by the PHA. An independent assessment will be required when the PHA submits the final request or when the PHA reconciles the preliminary application grant with the actual amounts received from the Federal Emergency Management Agency (FEMA), insurance carriers, and other natural disaster relief sources. Regardless of whether further funding from the set aside is requested, at a time specified by HUD, the PHA will be expected to provide a reconciliation of all funds received, to ensure that the PHA does not receive duplicate funding.

(f) *Procedure for final request of emergency or natural disaster funds.* In the request the PHA shall:

(1) Identify the public housing project(s) with the emergency or natural disaster condition(s).

(2) Identify and provide the date of the:

(i) Conditions that present an unforeseen or unpreventable threat to the health, life, or safety of residents in the case of emergencies; or

(ii) Natural disaster (*e.g.,* hurricane, tornado, etc.).

(3) Describe the activities that will be undertaken to correct the emergency or the conditions caused by the natural disaster and the estimated cost.

(4) Provide an independent assessment of the extent of and the cost to correct the condition. The assessment must be specific as to the damage and costs associated with the emergency or natural disaster.

(5) Provide a copy of a currently effective Declaration of Trust covering the property and an opinion of counsel that there are no preexisting liens or other encumbrances on the property.

(6) Demonstrate that without the requested funds from the set aside the PHA does not have adequate funds available to correct the emergency condition(s).

(7) Identify all other sources of available funds (*e.g.,* insurance proceeds, FEMA).

(8) Any other material required by HUD.

(g) *HUD Action.* HUD shall review all requests for emergency or natural disaster funds. If HUD determines that a PHA's request meets the requirements of this section, HUD shall approve the request subject to the availability of funds in the set aside, in the order in which requests are received and are determined approvable.

(h) *Submission of the CF ACC.* Upon being provided with a CF ACC Amendment from HUD, the PHA must sign and date the CF ACC Amendment and return it to HUD by the date established by HUD. HUD will execute the signed and dated CF ACC Amendment submitted by the PHA.

Subpart C—General Program Requirements

§ 905.300 Capital fund submission requirements.

(a) *General.* Unless otherwise stated, the requirements in this section apply to both qualified Public Housing Agencies (as described in § 903.3) and non-qualified Public Housing Agencies. Each PHA must complete a comprehensive physical needs assessment (PNA) to be submitted at a time and in a format prescribed by HUD. The PHA shall use the PNA to identify and prioritize work to be performed with Capital Funds at each project.

(b) *Capital Fund program submission requirements.* At the time that the PHA submits the ACC Amendment(s) for its Capital Fund Grants(s) to HUD, the PHA must also submit the following items:

(1) *Budget.* The Capital Fund Budget, including attachments, shall be prepared by a PHA using the form(s) prescribed by HUD. The PHA's budget must be approved by the PHA's Board of Commissioners; it does not require HUD approval. Work items listed in the budget must include, but are not limited to the following:

(i) Where a PHA has an approved Capital Fund Financing Program (CFFP) loan, debt service payments for the grants from which the payments are scheduled;

(ii) Where a PHA has an approved CFFP loan, the PHA shall also include all work and costs, including debt service payments, in the CFP 5-Year Action Plan. Work associated with the use of financing proceeds will be reported separately in the CFP Annual Statement/Performance and Evaluation Report; or

(iii) Work affecting health and safety and compliance with regulatory requirements such as section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and the lead-based paint poisoning prevention standards at 24 CFR part 35, before major systems (*e.g.,* heating, roof, etc.) and other costs of lower priority.

(2) *Certifications required for receipt of Capital Fund grants.* The PHA is also required to submit various certifications to HUD, in a form prescribed by HUD, including, but not limited to:

(i) Certification of PIC Data;

(ii) Standard Form—Disclosure of Lobbying Activities;

(iii) Standard Form—Drug Free Workplace;

(iv) Civil Rights Compliance in a form prescribed by HUD; and

(v) Compliance with Public Hearing Requirements.

(3) *Public hearing and Resident Advisory Board requirements.* A PHA must annually conduct a public hearing and consult with the Resident Advisory Board of the PHA to discuss either the PHA Annual Plan, or any changes to the goals, objectives, and policies of the

qualified PHA, in order to solicit public comment.

(4) *Qualified and non-qualified PHAs.* (i) Qualified PHAs, as described in 24 CFR 903.3, are required to comply with the requirements in the Housing and Economic Recovery Act (HERA), Public Law 110–289 (approved July 30, 2008), section 2702.

(ii) Non-Qualified PHAs are required to comply with the requirements of 24 CFR part 903.

(5) *HUD review for compliance.* The CFP submission requirements must meet the requirements of this part as well as the Public Housing Program Requirements as defined in § 905.108. PHAs are required to revise or correct information that is not in compliance, and HUD has the authority to impose administrative sanctions until the appropriate revisions are made. HUD will review the CFP submission requirements to determine whether:

(i) All of the information that is required to be submitted is included;

(ii) The information is consistent with the needs identified in the PNA and data available to HUD; and

(iii) There are any issues of compliance with applicable laws, regulations, or contract requirements that have not been addressed with the proposed use of the Capital Fund.

(6) *Time frame for submission of requirements.* The requirements identified in § 905.300(b) must be submitted to HUD in a format prescribed by HUD at the time that the PHA submits its signed CF ACC Amendment.

(7) *CFP 5-Year Action Plan covering large capital items for all PHAs.*

(i) Content. The CFP 5-Year Action Plan must describe the capital improvements necessary to ensure long-term physical and social viability of the PHA's public housing developments, including the capital improvements to be undertaken with the 5-year period, their estimated costs, and any other information required for participation in the CFP as prescribed by HUD. Except in the case of emergency work, the PHA shall not spend Capital Funds on any work that is not included in an approved CFP 5-Year Action Plan and its amendments.

(ii) Submission. The PHA must submit a CFP 5-Year Action Plan at least once every 5 years. The PHA may choose to update its CFP 5-Year Action Plan every year. The PHA shall indicate whether its CFP 5-Year Action Plan is fixed or rolling.

(iii) PHAs making amendments to the CFP 5-Year Action Plan must follow the requirements in 24 CFR 903.21.

(iv) HUD Review and Approval. PHA submission and HUD Approval requirements for the CFP 5-Year Action Plan must be made pursuant to 24 CFR part 903. In any given year that a PHA does not have an approved CFP 5-Year Action Plan, the Capital Fund grant(s) for these PHAs will be reserved and obligated; however, the PHA will not have access to those funds until its CFP 5-Year Action Plan is approved by HUD.

(8) *Performance and Evaluation Report.*

(i) All PHAs must prepare a CFP Annual Statement/Performance and Evaluation Report at a time and in a format prescribed by HUD. These reports shall be retained on file for all grants for which a final Actual Modernization Cost Certificate (AMCC) or an Actual Development Cost Certificate (ADCC) has not been submitted. A final Performance and Evaluation Report must be submitted in accordance with 24 CFR 905.322, at the time the PHA submits its AMCC or ADCC.

(ii) PHAs that are designated as Troubled under PHAS or the Section 8 Management Assessment Program (SEMAP), and/or were identified as noncompliant with section 9(j) obligation and expenditure requirements during the fiscal year, shall submit their CFP Annual Statement/Performance and Evaluation Reports to HUD for review and approval.

(iii) All other PHAs that are not designated as Troubled under PHAS, and were in compliance with section 9(j) obligation and expenditure requirements during the fiscal year, shall prepare a CFP Annual Statement/Performance and Evaluation report for all open grants and shall retain the report(s) on file at PHA to be available to HUD upon request.

§ 905.302 Timely submission of the CF ACC amendment by the PHA.

Upon being provided with a CF ACC Amendment from HUD, the PHA must sign and date the CF ACC Amendment and return it to HUD by the date established. HUD will execute the signed and dated CF ACC Amendment submitted by the PHA. If HUD does not receive the signed and dated Amendment by the submission deadline, the PHA will receive the Capital Fund grant for that year; however, it will have less than 24 months to obligate 90 percent of the Capital Fund grant and less than 48 months to expend these funds because the PHA's obligation start date and disbursement end date for these grants will remain as previously established by HUD.

§ 905.304 CF ACC term and covenant to operate.

(a) *Period of obligation to operate as public housing.* The PHA shall operate all public housing projects in accordance with the CF ACC, as amended, and applicable HUD regulations for the statutorily prescribed period. These periods shall be evidenced by a recorded Declaration of Trust on all public housing property. If the PHA uses Capital Funds to develop public housing or to modernize existing public housing, the CF ACC term and the covenant to operate those projects are as follows:

(1) *Development activities.* Each public housing project developed using Capital Funds shall establish a restricted use covenant to operate under the terms and conditions applicable to public housing for a 40-year period that begins on the date on which the project becomes available for occupancy, as determined by HUD.

(2) *Modernization activities.* For PHAs that receive Capital Fund assistance, the execution of each new CF ACC Amendment establishes an additional 20-year period that begins on the latest date on which modernization is completed, except that the additional 20-year period does not apply to a project that receives Capital Fund assistance only for management improvements.

(3) *Operating fund.* Any public housing project developed that receives Operating Fund assistance shall have a covenant to operate under requirements applicable to public housing for a 10-year period beginning upon the conclusion of the fiscal year for which such amounts were provided, except for such shorter period as permitted by HUD by an exception.

(b) *Mortgage or security interests.* The PHA shall not allow any mortgages or security interests in public housing assets, including under section 30 of the 1937 Act, without prior written approval from HUD.

(c) *Applicability of latest expiration date.* All public housing subject to this part or required by law shall be maintained and operated as public housing as prescribed until the latest expiration date provided in section 9(d)(3) of the 1937 Act (42 U.S.C. 1437g(d)(3)) or any other provision of law or regulation mandating the operation of the housing as public housing, or under terms and conditions applicable to public housing, for a specified period of time.

§ 905.306 Obligation and expenditure of Capital Fund grants.

(a) *Obligation.* A PHA shall obligate each Capital Fund grant, including formula grants, Replacement Housing Factor (RHF) grants, and natural disaster grants, no later than 24 months, and emergency grants no later than 12 months after the date on which the funds become available to the PHA for obligation, except as provided in paragraphs (c) and (d) of this section. However, a PHA with unobligated funds from a grant shall disregard this requirement for up to not more than 10 percent of the originally allocated funds from that grant. The funds become available to the PHA when HUD executes the CF ACC Amendment. With HUD approval, the PHA can accumulate RHF grants for up to 5 years or until it has adequate funds to undertake replacement housing. The PHA shall obligate 90 percent of the RHF grant within 24 months from the date that the PHA accumulates adequate funds, except as provided in paragraph (c) of this section.

(b) *Items and costs.* For funds to be considered obligated, all items and costs must meet the criteria for an obligation in § 905.108.

(c) *Extension to obligation requirement.* The PHA may request an extension of the obligation deadline, and HUD may grant an extension for a period of up to 12 months, based on:

(1) The size of the PHA;

(2) The complexity of the CFP of the PHA;

(3) Any limitation on the ability of the PHA to obligate the amounts allocated for the PHA from the Capital Fund in a timely manner as a result of state or local law; or

(4) Any other factors that HUD determines to be relevant.

(d) *HUD extension for other reasons.* HUD may extend the obligation deadline for a PHA for such a period as HUD determines to be necessary, if HUD determines that the failure of the PHA to obligate assistance in a timely manner is attributable to:

(1) Litigation;

(2) Delay in obtaining approvals from the Federal Government or a state or local government that is not the fault of the PHA;

(3) Compliance with environmental assessment and abatement requirements;

(4) Relocating residents;

(5) An event beyond the control of the PHA; or

(6) Any other reason established by HUD by Notice in the **Federal Register**.

(e) *Failure to obligate.* (1) For any month during the fiscal year, HUD shall withhold all new Capital Fund grants, including RHF grants, from any PHA that has unobligated funds in violation of § 905.306(a). The penalty will be imposed once the violations of § 905.306(a) are known. The PHA may cure the noncompliance by:

(i) Requesting in writing that HUD recapture the unobligated balance of the grant; or

(ii) Continuing to obligate funds for the grant in noncompliance until the noncompliance is cured.

(2) After the PHA has cured the noncompliance, HUD will release the withheld Capital Fund grant(s) minus a penalty of 1/12th of the grant for each month of noncompliance.

(f) *Expenditure.* The PHA shall expend all grant funds within 48 months after the date on which funds become available, as described in § 905.306(a). The deadline to expend funds may be extended only by the period of time of a HUD-approved extension of the obligation deadline. No other extensions of the expenditure deadline will be granted. All funds not expended will be recaptured.

§ 905.308 Federal requirements applicable to all capital fund activities.

(a) The PHA shall comply with the requirements of 24 CFR part 5 (General HUD Program Requirements; Waivers), 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), and this part.

(b) The PHA shall also comply with the following program requirements.

(1) *Nondiscrimination and equal opportunity.* The PHA shall comply with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, the Department's generally applicable nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a) and the Architectural Barriers Act of 1968, 42 U.S.C. 4151 *et seq.,* and its implementing regulations at 24 CFR parts 40 and 41. The PHA shall affirmatively further fair housing in its use of funds under this part, which includes but is not limited to addressing modernization and development in the completion of requirements at 24 CFR 903.7(o).

(2) *Environmental requirements.* All activities under this part are subject to an environmental review by a responsible entity under HUD's environmental regulations at 24 CFR part 58 and must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and the related laws and authorities listed at 24 CFR 58.5. HUD may make a finding in accordance with 24 CFR 58.11 and may perform the environmental review itself under the provisions of 24 CFR part 50. In those cases where HUD performs the environmental review under 24 CFR part 50, it will do so before approving a proposed project, and will comply with the requirements of NEPA and the related requirements at 24 CFR 50.4.

(3) *Wage rates.* (i) *Davis-Bacon wage rates.* For all work or contracts exceeding $2,000 in connection with development activities or modernization activities (except for nonroutine maintenance work, as defined in § 905.200(b)(5) of this part), all laborers and mechanics employed on the construction, alteration, or repair shall be paid not less than the wages prevailing in the locality, as determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 3142).

(ii) *HUD-determined wage rates.* For all operations work and contracts, including routine and nonroutine maintenance work (as defined in § 905.200(b)(5) of this part), all laborers and mechanics employed shall be paid not less than the wages prevailing in the locality, as determined or adopted by HUD pursuant to section 12(a) of the 1937 Act, 42 U.S.C. 1437j(a).

(iii) *State wage rates.* Preemption of state prevailing wage rates as provided at 24 CFR 965.101.

(iv) *Volunteers.* The prevailing wage requirements of this section do not apply to volunteers performing development, modernization, or nonroutine maintenance work under the conditions set out in 24 CFR part 70.

(4) *Technical wage rates.* All architects, technical engineers, draftsmen, and technicians (other than volunteers under the conditions set out in 24 CFR part 70) employed in a development or modernization project shall be paid not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable state or local law) by HUD.

(5) *Lead-based paint poisoning prevention.* The PHA shall comply with the Lead-Based Paint Poisoning Prevention Act (LPPPA) (42 U.S.C. 4821 *et seq.*), the Residential Lead-Based Paint Hazard Reduction Act (42 U.S.C. 4851 *et seq.*), and the Lead Safe Housing Rule and the Lead Disclosure Rule at 24 CFR part 35.

(6) *Fire safety.* A PHA shall comply with the requirements of section 31 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2227).

(7) *Flood insurance and floodplain requirements.* The PHA will not engage

in the acquisition, construction, or improvement of a public housing project located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i) The requirements of 24 CFR part 55, Floodplain Management, have been met, including a determination by a responsible entity under 24 CFR part 58 or by HUD under 24 CFR part 50 that there is no practicable alternative to locating in an area of special flood hazards; and the minimization of unavoidable adverse impacts.

(ii) Flood insurance on the building is obtained in compliance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*); and

(iii) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59 through 79, or less than one year has passed since FEMA notification regarding flood hazards.

(8) *Coastal barriers.* In accordance with the Coastal Barriers Resources Act (16 U.S.C. 3501 *et seq.*), no financial assistance under this part may be made available within the Coastal Barrier Resources System.

(9) *Displacement, relocation, and real property acquisition.* All acquisition or rehabilitation activities carried out under the Capital Fund, including acquisition of any property for development, shall comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and with implementing regulations at 49 CFR part 24. Demolition or disposition under section 9(d)(4) is covered by the section 18 relocation provisions at 24 CFR 970.21.

(10) *Procurement and contract requirement.* PHAs and their contractors shall comply with Section 3 of the Housing and Community Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing rules at 24 CFR part 135.

§ 905.310 Disbursements from HUD.

(a) The PHA shall initiate a fund requisition from HUD only when funds are due and payable, unless HUD approves another payment schedule as authorized by 24 CFR 85.21.

(b) The PHA shall maintain detailed disbursement records to document eligible expenditure (*e.g.,* contracts or other applicable documents), in a form and manner prescribed by HUD.

§ 905.312 Design and construction.

The PHA shall meet the following design and construction standards, as applicable, for all development and modernization.

(a) Physical structures shall be designed, constructed, and equipped to be consistent with the neighborhoods they occupy; meet contemporary standards of modest design, comfort, and livability; promote security; maximize energy conservation; and be attractive and marketable to the people they are intended to serve.

(b) All development projects shall be designed and constructed in compliance with:

(1) A national building code, such as those developed by the International Code Council or the National Fire Protection Association; and the 2006 International Energy Conservation Code (IECC), or ASHRAE 90.1–2004 for multifamily high-rises (four stories or higher), or a successor energy code or standard that has been adopted by HUD pursuant to 42 U.S.C. 12709 or other relevant authority;

(2) Applicable state and local laws, codes, ordinances, and regulations;

(3) Other federal requirements, including fire protection and safety standards implemented under section 31 of the Fire Administration Authorization Act of 1992, 15 U.S.C. 2227 and HUD minimum property standards (*e.g.,* 24 CFR part 200, subpart S);

(4) Accessibility Requirements as required by Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; Title II of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) and implementing regulations at 28 CFR part 35; and, if applicable, the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR part 100; and

(5) High-rise elevator structure specifications. A high-rise elevator structure shall not be provided for families with children regardless of density, unless the PHA demonstrates and HUD determines that there is no practical alternative, where project-based Section 8 assistance under 42 U.S.C. 1437f(o)(13) is provided through a Housing Assistance Payment (HAP) contract, in which case the assistance may be provided to a high-rise elevator building, including one occupied by families with children, without review and approval of the contract by the Secretary.

(c) All modernization projects shall be designed and constructed in compliance with:

(1) The modernization standards as prescribed by HUD;

(2) Accessibility requirements as required by Section 504 of the Rehabilitation Act (29 U.S.C. 794) and implementing regulations at 24 CFR part 8; Title II of the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*) and implementing regulations at 28 CFR part 35; and, if applicable, the Fair Housing Act (42 U.S.C. 3601–3619) and implementing regulations at 24 CFR part 100; and

(3) Cost-effective energy conservation measures, identified in the PHA's most recently updated energy audit, conducted pursuant to 24 CFR part 965, subpart C.

(d) PHAs shall use appliances that are Energy Star products or Federal Energy Management Program-designed products, unless the PHA determines that the purchase of these appliances is not cost-effective.

§ 905.314 Cost and other limitations.

(a) *Eligible administrative costs.* Where the physical or management improvement costs will benefit programs other than Public Housing, such as the Housing Choice Voucher program or local revitalization programs, eligible administrative costs are limited to the amount directly attributable to the public housing program.

(b) *Maximum project cost.* The maximum project cost represents the total amount of public housing capital assistance used in connection with the development of a public housing project, and includes:

(1) Project costs that are subject to the TDC limit (*i.e.,* HCC and Community Renewal Costs); and

(2) Project costs that are not subject to the TDC limit (*i.e.,* Additional Project Costs). The total project cost to be funded with public housing capital assistance, as set forth in the proposal and as approved by HUD, becomes the maximum project cost stated in the CF ACC Amendment. Upon completion of the project, the actual project cost is determined based upon the amount of public housing capital assistance expended for the project, and this becomes the maximum project cost for purposes of the CF ACC Amendment.

(c) *TDC limit.* (1) The Capital Fund may not be used to pay for Housing Construction Cost (HCC) and Community Renewal Costs in excess of the TDC limit, as determined under paragraph (b)(2) of this section. However, HOPE VI grantees will be eligible to request a TDC exception for public housing and HOPE VI funds awarded in FFY 1996 and prior years. However, PHAs may also request a TDC exception for integrated utility management, capital planning, and other capital and management activities

that maximize energy conservation and efficiency, including green construction and retrofits, which include windows; heating system replacements; wall insulation; site-based generation; advanced energy savings technologies, including renewable energy generation; and other such retrofits. HUD will apply a cost-effectiveness test to ensure that up-front expenditures due to the exception would be justified by future cost savings when deciding whether to grant a TDC waiver under this section.

(2) *Determination of TDC limit.* HUD will determine the TDC for a public housing project as follows:

(i) *Step 1: Unit construction cost guideline.* HUD will first determine the applicable "construction cost guideline," averaging the current construction costs as listed in two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use for this purpose are the R.S. Means cost index for construction of "average" quality and the Marshall & Swift cost index for construction of "good" quality. HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through a notice published in the **Federal Register**.

(ii) *Step 2: Bedroom size and structure types.* The construction cost guideline is then multiplied by the number of units for each bedroom size and structure type.

(iii) *Step 3: Elevator and non-elevator type structures.* HUD will then multiply the resulting amounts from step 2 by 1.6 for elevator type structures and by 1.75 for non-elevator type structures.

(iv) *Step 4: TDC limit.* The TDC limit for a project is calculated by adding the resulting amounts from step 3 for all the public housing units in the project.

(3) *Costs not subject to the TDC limit.* Additional Project Costs are not subject to the TDC limit, which is described in paragraph (c) of this section.

(4) *Funds not subject to the TDC limit.* A PHA may use funding sources not subject to the TDC limit (*e.g.,* Community Development Block Grant (CDBG) funds, low-income tax credits, private donations, private financing, etc.) to cover project costs that exceed the TDC limit or the HCC limit described in paragraph (c) of this section. Such funds, however, may not be used for items that would result in substantially increased operating, maintenance, or replacement costs, and must meet the requirements of section 102 of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) (42 U.S.C. 3545). These funds must be included in the project development cost budget.

(d) *Housing Construction Costs (HCC).*

(1) General. A PHA may not use Capital Funds to pay for HCC in excess of the amount determined under paragraph (c)(2) of this section.

(2) Determination of HCC limit. HUD will determine the HCC limit as listed in at least two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use for this purpose are the R.S. Means cost index for construction of "average" quality and the Marshal & Swift cost index for construction of "good" quality. HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through a notice published in the **Federal Register**. The resulting construction cost guideline is then multiplied by the number of public housing units in the project based upon bedroom size and structure type. The HCC limit for a project is calculated by adding the resulting amounts for all public housing units in the project.

(3) The HCC limit is not applicable to the acquisition of existing housing, whether or not such housing will be rehabilitated. The TDC limit is applicable to such acquisition.

(e) *Community Renewal Costs.* Capital Funds may be used to pay for Community Renewal Costs in an amount equivalent to the difference between the HCC paid for with public housing capital assistance and the TDC limit.

(f) *Rehabilitation of existing public housing projects.* The HCC limit is not applicable to the rehabilitation of existing Public Housing Projects. The TDC limit for modernization of existing public housing is 90 percent of the TDC limit as determined under § 905.314(c). This limitation does not apply to the rehabilitation of any property acquired pursuant to § 905.600.

(g) *Modernization cost limits.* If the modernization costs are more than 90 percent of the TDC, then the project shall not be modernized. Capital Funds shall not be expended to modernize an existing public housing development that fails to meet the HUD definition of reasonable cost found in § 905.108, except for:

(1) Emergency work;

(2) Essential maintenance necessary to keep a public housing project habitable until the demolition or disposition application is approved; or

(3) The costs of maintaining the safety and security of a site that is undergoing demolition.

(h) *Administrative cost limits and Capital Fund Program Fee.*

(1) Administrative cost limits (for non-asset management PHAs).

(i) Modernization. The PHA shall not budget or expend more than 10 percent of its annual Capital Fund grant on administrative costs, in accordance with its CFP 5-Year Action Plan. The 10 percent limit excludes any costs related to lead-based paint or asbestos testing, in-house Architectural and Engineering work, or other special administrative costs required by state or local law.

(ii) Development. For development work with Capital Fund and RHF grants, the administrative cost limit is 3 percent of the total project budget, or, with HUD's approval, up to 6 percent of the total project budget.

(2) Capital Fund Program Fee (for asset management PHAs). For a PHA that is under asset management, the Capital Fund Program Fee and administrative costs limits are the same. For the Capital Fund Program Fee, a PHA may charge a management fee of up to 10 percent of the annual CFP formula grant(s) amount, excluding emergency and disaster grants and also excluding any costs related to lead-based paint or asbestos testing, in-house Architectural and Engineering work, or other special administrative costs required by state or local law. The Capital Fund Program Fee for development work funded with Capital Fund and RHF grants is 3 percent of the total project budget, or, with HUD approval, up to 6 percent of the total project budget.

(i) *Management improvement cost limits.* A PHA shall not budget nor use more than 20 percent of its annual Capital Fund grant for management improvement costs identified in its CFP 5-Year Action Plan through FY 2010. In FFY 2011, a PHA shall not budget nor use more than 16 percent for management improvements for grants awarded in that fiscal year; for FFY 2012, a PHA shall not budget nor use more than 13 percent for grants awarded in that year; and for FFY 2013 and thereafter, a PHA shall not budget nor use more than 10 percent for grants awarded. Management improvements are an eligible expense for PHAs participating in Asset Management.

(j) *Types of labor.* A PHA may use force account labor for development and modernization activities if included in a HUD-approved CFP 5-Year Action Plan. HUD approval to use force account labor is not required when the PHA is

designated as a High Performer under PHAS.

(k) *RMC activities.* When the entire development, financing, or modernization activity, including the planning and architectural design, is administered by an RMC, the PHA shall not retain any portion of the Capital Funds for any administrative or other reason unless the PHA and the RMC provide otherwise by contract.

(l) *Capital Funds for operating costs.* A PHA may use Capital Funds for operating costs only if it is included in the HUD-approved CFP 5-Year Action Plan and limited as described in paragraphs (l)(1) and (2) of this section. Capital Funds identified in the CFP 5-Year Action Plan to be transferred to operations are obligated once the funds have been budgeted and drawn down by the PHA. Once such transfer of funds occurs, the PHA must follow the requirements of 24 CFR part 990 with respect to those funds.

(1) *Large PHAs.* A PHA with 250 or more units may use no more than 20 percent of its annual Capital Fund grant for activities that are eligible under the Operating Fund at 24 CFR part 990.

(2) *Small PHAs.* A PHA with less than 250 units, that is not designated as troubled under PHAS, may use up to 100 percent of its annual Capital Fund grant for activities that are eligible under the Operating Fund at 24 CFR part 990, except that the PHA must have determined that there are no debt service payments, significant Capital Fund needs, or emergency needs that must be met prior to transferring 100 percent of its funds to operating expenses.

§ 905.316 Procurement and contract requirements.

(a) *General.* PHAs shall comply with 24 CFR 85.36, and HUD implementing instructions, for all capital activities including modernization and development except as provided in paragraph (c) in this section.

(b) *Contracts.* The PHA shall use all contract forms prescribed by HUD. If a form is not prescribed, the PHA may use any Office of Management and Budget (OMB) approved form that contains all applicable federal requirements and contract clauses.

(c) *Mixed-finance development projects.* Mixed-finance development partners may be selected in accordance with the 24 CFR 905.604. Contracts and other agreements with mixed-finance development partners must specify that they comply with the requirements of §§ 905.602 and 905.604.

(d) *Assurances of completion.* Notwithstanding 24 CFR 85.36(h), for each construction contract over $100,000, the contractor shall furnish the PHA with the following:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price; and

(2) One of the following:

(i) A performance bond and payment bond for 100 percent of the contract price;

(ii) A performance bond and a payment bond, each for 50 percent or more of the contract price;

(iii) A 20 percent cash escrow;

(iv) A 25 percent irrevocable letter of credit with terms acceptable to HUD, or

(v) Any other payment method acceptable to HUD.

(e) *Procurement of recovered materials.* PHAs that are state agencies and agencies of a political subdivision of a state that are using assistance under this part for procurement, and any person contracting with such PHAs with respect to work performed under an assisted contract, must comply with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. In accordance with section 6002, these agencies and persons must procure items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered material practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired in preceding fiscal year exceeded $10,000; must procure solid waste management services in a manner that maximizes energy and resource recovery; and must have established an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

§ 905.318 Title and deed.

The PHA shall obtain a title insurance policy that guarantees the title is good and marketable before taking title to any and all sites and properties acquired with Capital Funds. The PHA shall record within 90 days the deed and Declaration of Trust in the form and in the manner prescribed by HUD. The PHA shall at all times maintain a recorded Declaration of Trust in the form and manner prescribed by HUD on all public housing projects covering the term required by this part.

§ 905.320 Contract administration and acceptance of work.

(a) *Contract administration.* The PHA is responsible, in accordance with 24 CFR 85.36, for all contractual and administrative issues arising out of their procurements. The PHA shall maintain full and complete records on the history of each procurement transaction.

(b) *Inspection and acceptance.* The PHA or owner, in the case of mixed finance, shall carry out inspections of work in progress and goods delivered, as necessary, to ensure compliance with existing contracts. If, upon inspection, the PHA determines that the work and/or goods are complete, satisfactory and, as applicable, otherwise undamaged, except for any work that is appropriate for delayed completion, the PHA shall accept the work. The PHA shall determine any hold-back for items of delayed completion and the amount due and payable for the work that has been accepted, including any conditions precedent to payment that are stated in the construction contract or contract of sale. The contractor shall be paid for items only after the PHA inspects and accepts that work.

(c) *Guarantees and warranties.* The PHA or owner, in the case of mixed finance, shall specify the guaranty period and amounts to be withheld, as applicable, and shall provide that all contractor, manufacturer, and supplier warranties required by the construction and modernization documents shall be assigned to the PHA. The PHA shall inspect each dwelling unit and the overall project approximately 3 months after the beginning of the project guaranty period, 3 months before its expiration, and at other times as may be necessary to exercise its rights before expiration of any warranties. The PHA shall require repair or replacement of all defective items prior to the expiration of the guaranty or warranty periods.

(d) *Notification of completion.* The PHA shall require that all contractors and developers notify the PHA in writing when the contract work, including any approved off-site work, will be completed and ready for inspection.

§ 905.322 Fiscal closeout.

(a) *General.* Each Capital Fund grant and/or development project is subject to fiscal closeout. Fiscal closeout includes the submission of a cost certificate; an audit, if applicable; a final Performance and Evaluation Report; and HUD approval of the cost certificate.

(b) *Submission of cost certificate.* (1) When an approved development or modernization activity is completed or when HUD terminates the activity, the PHA must submit to HUD the:

(i) Actual Development Cost Certificate (ADCC) within 12 months. For purposes of the CF ACC, costs incurred between the completion of the

development and DOFA becomes the actual development cost; and

(ii) Actual Modernization Cost Certificate (AMCC) for each grant, no later than 12 months after the expenditure deadline but no earlier than the obligation end date. A PHA with under 250 units with an approved CFP 5-Year Action Plan for use of 100 percent of the Capital Fund Grant in Operations may submit the cost certificate any time after the funds have been budgeted to operations and withdrawn, as described in § 905.314(l).

(2) If the PHA does not submit the cost certificate and the final CFP Annual Statement/Performance and Evaluation Report within the period prescribed in this section, HUD may impose restrictions on open Capital Fund grants, *e.g.,* establish review thresholds, set the grant to "auto review" (HUD automatically reviews it on a periodic basis), or suspend grants, until the cost certificate for the affected grant is submitted. These restrictions may be imposed by HUD after notification of the PHA.

(c) *Audit.* The cost certificate is a financial statement subject to audit pursuant to 24 CFR 85.26. After submission of the cost certificate to HUD, the PHA shall provide the cost certificate to its independent public auditor (IPA) as part of its annual audit. After audit, the PHA will notify HUD of the grants included in the audit, any exceptions noted by the PHA auditor, and the schedule to complete corrective actions recommended by the auditor.

(d) *Review and approval.* For PHAs exempt from the audit requirements, HUD will review and approve the cost certificate based on available information regarding the Capital Fund grant. For PHAs subject to an audit, HUD will review the information from the annual audit provided by the PHA and approve the certificate after all exceptions, if any, have been resolved.

(e) *Recapture.* All Capital Funds in excess of the actual cost incurred for the grant are subject to recapture. Any funds awarded to the PHA that are returned or any funds taken back from the PHA in a fiscal year after the grant was awarded are subject to recapture.

§ 905.324 Data reporting requirements.

The PHA shall provide, at minimum, the following data reports, at a time and in a form prescribed by HUD:

(a) The Performance and Evaluation Report as described in § 905.300(b)(8);

(b) Updates on the PHA's building and unit data as required by HUD;

(c) Reports of obligation and expenditure; and

(d) Any other information required for participation in the Capital Fund Program.

§ 905.326 Records.

(a) The PHA will maintain full and complete records of the history of each Capital Fund grant, including, but not limited to, CFP 5-Year Action Plans, procurement, contracts, obligations, and expenditures.

(b) The PHA shall retain all documents related to the activities for which the Capital Fund grant was received for 5 years after HUD approves either the actual development or modernization cost certificate, unless a longer period is required by applicable law.

(c) HUD and its duly authorized representatives shall have full and free access to all PHA offices, facilities, books, documents, and records, including the right to audit and make copies.

Subpart D—Capital Fund Formula

§ 905.400 Capital Fund formula (CF formula).

(a) *General.* This section describes the formula for allocating Capital Funds to PHAs.

(b) *Formula allocation based on relative needs.* HUD shall allocate Capital Funds to the PHAs in accordance with the CF formula. The CF formula measures the existing modernization needs and accrual needs of PHAs.

(c) *Allocation for existing modernization needs under the CF formula.* HUD shall allocate one-half of the available Capital Fund amount based on the relative existing modernization needs of PHAs, determined in accordance with paragraph (d) of this section.

(d) *PHAs with 250 or more units in FFY 1999, except the New York City and Chicago Housing Authorities.* The estimates of the existing modernization needs for these PHAs shall be based on the following:

(1) Objective measurable data concerning the following PHA, community, and project characteristics applied to each project:

(i) The average number of bedrooms in the units in a project (Equation co-efficient: 4604.7);

(ii) The total number of units in a project (Equation co-efficient: 10.17);

(iii) The proportion of units in a project in buildings completed in 1978 or earlier. In the case of acquired projects, HUD will use the DOFA unless the PHA provides HUD with the actual date of construction completion. When the PHA provides the actual date of construction completion, HUD will use that date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: 4965.4);

(iv) The cost index of rehabilitating property in the area (Equation co-efficient: −10608);

(v) The extent to which the units of a project were in a nonmetropolitan area as defined by the United States Bureau of the Census (Census Bureau) during FFY 1996 (Equation co-efficient: 2703.9);

(vi) The PHA is located in the Southern census region, as defined by the Census Bureau (Equation co-efficient: −269.4);

(vii) The PHA is located in the Western census region, as defined by the Census Bureau (Equation co-efficient: −1709.5);

(viii) The PHA is located in the Midwest census region as defined by the Census Bureau (Equation co-efficient: 246.2); and

(2) An equation constant of 13851.

(i) *Newly constructed units.* Units with a DOFA date of October 1, 1991, or after, shall be considered to have a zero existing modernization need.

(ii) *Acquired projects.* Projects acquired by a PHA with a DOFA date of October 1, 1991, or after, shall be considered to have a zero existing modernization need.

(3) *For New York City and Chicago Housing Authorities, based on a large sample of direct inspections.* Prior to the cost calibration in paragraph (d)(5) of this section, the number used for the existing modernization need of family projects shall be $16,680 in New York and $24,286 in Chicago, and the number for elderly projects shall be $14,622 in New York and $16,912 in Chicago.

(i) *Newly constructed units.* Units with a DOFA date of October 1, 1991, or after, shall be considered to have a zero existing modernization need.

(ii) *Acquired projects.* Projects acquired by a PHA with a DOFA date of October 1, 1991, or after, shall be considered to have a zero existing modernization need.

(4) *PHAs with fewer than 250 units in FFY 1999.* The estimates of the existing modernization need shall be based on the following:

(i) Objective measurable data concerning the PHA, community, and project characteristics applied to each project:

(A) The average number of bedrooms in the units in a project. (Equation coefficient: 1427.1);

(B) The total number of units in a project. (Equation coefficient: 24.3);

(C) The proportion of units in a project in buildings completed in 1978 or earlier. In the case of acquired projects, HUD shall use the DOFA date unless the PHA provides HUD with the actual date of construction completion, in which case HUD shall use the actual date of construction completion (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation coefficient: −1389.7);

(D) The cost index of rehabilitating property in the area, as of FFY 1999. (Equation coefficient: −20163);

(E) The extent to which the units of a project were in a nonmetropolitan area as defined by the Census Bureau during FFY 1996. (Equation coefficient: 6157.7);

(F) The PHA is located in the Southern census region, as defined by the Census Bureau. (Equation coefficient: 4379.2);

(G) The PHA is located in the Western census region, as defined by the Census Bureau. (Equation coefficient: 3747.7);

(H) The PHA is located in the Midwest census region as defined by the Census Bureau. (Equation coefficient: −2073.5); and

(ii) An equation constant of 24762.

(A) *Newly constructed units.* Units with a DOFA date of October 1, 1991, or after, shall be considered to have a zero existing modernization need.

(B) *Acquired projects.* Projects acquired by a PHA with a DOFA date of October 1, 1991, or after, shall be considered by HUD to have a zero existing modernization need.

(5) *Calibration of existing modernization need for cost index of rehabilitating property in the area.* The estimated existing modernization need determined under paragraphs (d)(1), (d)(2), or (d)(3) of this section shall be adjusted by the values of the cost index of rehabilitating property in the area.

(6) *Freezing of the determination of existing modernization need.* FFY 2008 is the last fiscal year that HUD will calculate the existing modernization need. The existing modernization need will be frozen for all developments at the calculation as of FFY 2008 and will be adjusted for changes in the inventory and paragraph (d)(4) of this section.

(e) *Allocation for accrual needs under the CF formula.* HUD shall allocate the other half of the remaining Capital Fund amount based on the relative accrual needs of PHAs, determined in accordance with this paragraph of this section.

(1) PHAs with 250 or more units, except the New York City and Chicago Housing Authorities. The estimates of the accrual need shall be based on the following:

(i) Objective measurable data concerning the following PHA, community, and project characteristics applied to each project:

(A) The average number of bedrooms in the units in a project. (Equation coefficient: 324.0);

(B) The extent to which the buildings in a project average fewer than 5 units. (Equation coefficient: 93.3);

(C) The age of a project, as determined by the DOFA date. In the case of acquired projects, HUD shall use the DOFA date unless the PHA provides HUD with the actual date of construction completion, in which case HUD shall use the actual date of construction (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation coefficient: −7.8);

(D) Whether the development is a family project. (Equation coefficient: 184.5);

(E) The cost index of rehabilitating property in the area. (Equation coefficient: −252.8);

(F) The extent to which the units of a project were in a nonmetropolitan area as defined by the Census Bureau during FFY 1996. (Equation coefficient: −121.3);

(G) PHA size of 6,600 or more units in FFY 1999. (Equation coefficient: −150.7);

(H) The PHA is located in the Southern census region, as defined by the Census Bureau. (Equation coefficient: 28.4);

(I) The PHA is located in the Western census region, as defined by the Census Bureau. (Equation coefficient: −116.9);

(J) The PHA is located in the Midwest census region as defined by the Census Bureau. (Equation coefficient: 60.7); and

(ii) An equation constant of 1371.9.

(2) For the New York City and Chicago Housing Authorities, based on a large sample of direct inspections. Prior to the cost calibration in paragraph (e)(4) of this section the number used for the accrual need of family developments is $1,395 in New York, and $1,251 in Chicago, and the number for elderly developments is $734 in New York and $864 in Chicago.

(3) PHAs with fewer than 250 units. The estimates of the accrual need shall be based on the following:

(i) Objective measurable data concerning the following PHA, community, and project characteristics applied to each project:

(A) The average number of bedrooms in the units in a project. (Equation coefficient: 325.5);

(B) The extent to which the buildings in a project average fewer than 5 units. (Equation coefficient: 179.8);

(C) The age of a project, as determined by the DOFA date. In the case of acquired projects, HUD shall use the DOFA date unless the PHA provides HUD with the actual date of construction completion. When provided with the actual date of construction completion, HUD shall use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation coefficient: −9.0);

(D) Whether the project is a family development. (Equation coefficient: 59.3);

(E) The cost index of rehabilitating property in the area. (Equation coefficient: −1570.5);

(F) The extent to which the units of a project were in a nonmetropolitan area as defined by the Census Bureau during FFY 1996. (Equation coefficient: −122.9);

(G) The PHA is located in the Southern census region, as defined by the Census Bureau. (Equation coefficient: −564.0);

(H) The PHA is located in the Western census region, as defined by the Census Bureau. (Equation coefficient: −29.6);

(I) The PHA is located in the Midwest census region as defined by the Census Bureau. (Equation coefficient: −418.3); and

(ii) An equation constant of 3193.6.

(4) *Calibration of accrual need for the cost index of rehabilitating property in the area.* The estimated accrual need determined under either paragraph (e)(2) or (e)(3) of this section shall be adjusted by the values of the cost index of rehabilitation.

(f) *Calculation of number of units.*

(1) *General.* For purposes of determining the number of a PHA's public housing units and the relative modernization needs of PHAs:

(i) HUD shall count as one unit:

(A) Each public housing and section 23 bond-financed CF unit, except that each existing unit under the Turnkey III program shall count as one-fourth of a unit. Units receiving operating subsidy only shall not be counted.

(B) Each existing unit under the Mutual Help program.

(ii) HUD shall add to the overall unit count any units that the PHA adds to its inventory when the units are under CF ACC amendment and have reached DOFA by the date that HUD establishes for the FFY in which the CF formula is being run (hereafter called the "reporting date"). New CF units and reaching DOFA after the reporting date

shall be counted for CF formula purposes in the following FFY.

(2) *Replacement units.* Replacement units newly constructed on or after October 1, 1998, that replace units in a project funded in FFY 1999 by the Comprehensive Grant formula system or the Comprehensive Improvement Assistance Program (CIAP) formula system shall be given a new CF ACC number as a separate project and shall be treated as a newly constructed development as outlined in § 905.600.

(3) *Reconfiguration of units.* Reconfiguration of units may cause the need to be calculated by the new configuration based on the formula characteristics in the building and unit's module of PIC (refer to the formula sections here). The unit counts will be determined by the CF units existing after the reconfiguration.

(4) *Reduction of units.* For a project losing units as a result of demolition and disposition, the number of units on which the CF formula is based shall be the number of units reported as eligible for Capital Funds as of the reporting date. Units are eligible for funding until they are removed due to demolition and disposition in accordance with a schedule approved by HUD.

(g) *Computation of formula shares under the CF formula.* (1) *Total estimated existing modernization need.* The total estimated existing modernization need of a PHA under the CF formula is the result of multiplying for each project the PHA's total number of formula units by its estimated existing modernization need per unit, as determined by paragraph (d) of this section, and calculating the sum of these estimated project needs.

(2) *Total accrual need.* The total accrual need of a PHA under the CF formula is the result of multiplying for each project the PHA's total number of formula units by its estimated accrual need per unit, as determined by paragraph (e) of this section, and calculating the sum of these estimated accrual needs.

(3) *PHA's formula share of existing modernization need.* A PHA's formula share of existing modernization need under the CF formula is the PHA's total estimated existing modernization need divided by the total existing modernization need of all PHAs.

(4) *PHA's formula share of accrual need.* A PHA's formula share of accrual need under the CF formula is the PHA's total estimated accrual need divided by the total existing accrual need of all PHAs.

(5) *PHA's formula share of capital need.* A PHA's formula share of capital need under the CF formula is the average of the PHA's share of existing modernization need and its share of accrual need (by which method each share is weighted 50 percent).

(h) *CF formula capping.* (1) For units that are eligible for funding under the CF formula (including replacement housing units discussed below), a PHA's CF formula share shall be its share of capital need, as determined under the CF formula, subject to the condition that no PHA's CF formula share for units funded under CF formula can be less than 94 percent of its formula share had the FFY 1999 formula system been applied to these CF formula eligible units. The FFY 1999 formula system is based upon the FFY 1999 Comprehensive Grant formula system for PHAs with 250 or more units in FFY 1999 and upon the FFY 1999 Comprehensive Improvement Assistance Program (CIAP) formula system for PHAs with fewer than 250 units in FFY 1999.

(2) For a Moving to Work (MTW) PHA whose MTW agreement provides that its CF formula share is to be calculated in accordance with the previously existing formula, the PHA's CF formula share, during the term of the MTW agreement, may be approximately the formula share that the PHA would have received had the FFY 1999 formula funding system been applied to the CF formula eligible units.

(i) *RHF to reflect formula need for developments with demolition, or disposition occurring on or after October 1, 1998.*

(1) *RHF generally.* PHAs that have a reduction in the number of units attributable to demolition or disposition of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the CFF calculation qualify for application of a replacement housing factor, subject to satisfaction of criteria stated in paragraph (i)(5) of this section

(2) *When applied.* The RHF will be added, where applicable:

(i) For the first 5 years after the reduction of units described in paragraph (i)(1) of this section; and

(ii) For an additional 5 years if the planning, leveraging, obligation, and expenditure requirements are met. As a prior condition of a PHA's receipt of additional funds for replacement housing provided for the second 5-year period or any portion thereof, a PHA must obtain a firm commitment of substantial additional funds other than public housing funds for replacement housing, as determined by HUD.

(3) *Computation of RHF.* The RHF consists of the difference between the CFF share without the CFF share reduction of units attributable to demolition or disposition, and the CFF share that resulted after the reduction of units attributable to demolition or disposition.

(4) *Replacement housing funding in FFY 1998 and 1999.* Units that received replacement housing funding in FFY 1998 will be treated as if they had received 2 years of replacement housing funding by FFY 2000. Units that received replacement housing funding in FFY 1999 will be treated as if they had received one year of replacement housing funding as of FFY 2000.

(5) *PHA Eligibility for the RHF.* A PHA is eligible for this factor only if the PHA satisfies the following criteria:

(i) The PHA requests the application of the replacement housing factor;

(ii) The PHA will use the funding in question only for replacement housing;

(iii) The PHA will use the restored funding that results from the use of the replacement factor to provide replacement housing in accordance with the PHA's 5-Year Plan, as approved by HUD under part 903 of this chapter;

(iv) The PHA has not received funding for public housing units that will replace the lost units under Public Housing Development, and Major Reconstruction of Obsolete Public Housing, HOPE VI, or programs that otherwise provide for replacement with public housing units;

(v) The PHA, if designated troubled by HUD, and not already under the direction of HUD or an appointed receiver, in accordance with part 902 of this chapter, uses an Alternative Management Entity as defined in part 902 of this chapter, for development of replacement housing and complies with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(vi) The PHA undertakes any development of replacement housing in accordance with applicable HUD requirements and regulations.

(6) *Failure to provide replacement housing in a timely fashion.*

(i) A PHA will be subject to the actions described in paragraph (i)(7)(ii) of this section if the PHA does not:

(A) Use the restored funding that results from the use of the RHF to provide replacement housing in a timely fashion as provided in paragraph (i)(7)(i) of this section and in accordance with applicable HUD requirements and regulations, and

(B) Make reasonable progress on such use of the funding, in accordance with applicable HUD requirements and regulations.

(ii) If a PHA fails to act as described in paragraph (i)(6)(i) of this section,

HUD will require appropriate corrective action under these regulations, may recapture and reallocate the funds, or may take other appropriate action.

(7) *Requirement to obligate and expend RHF funds within specified period.*

(i) In addition to the requirements otherwise applicable to obligation and expenditure of funds, PHAs are required to obligate assistance received as a result of the RHF within:

(A) 24 months from the date that funds become available to the PHA; or

(B) With specific HUD approval, 24 months from the date that the PHA accumulates adequate funds to undertake replacement housing.

(ii) To the extent the PHA has not obligated any funds provided as a result of the RHF within the time frames required by this paragraph, or has not expended such funds within a reasonable time, HUD shall reduce the amount of funds to be provided to the PHA as a result of the application of the second 5 years of the replacement housing factor.

(j) *RHF to reflect formula need for developments with demolition, disposition, or sale for homeownership occurring on or after October 1, 2009.*

(1) *RHF generally.* In FFY 2011 and thereafter, PHAs that have a reduction in the number of units occurring in FFY 2010 and attributable to demolition, disposition, or sale of homeownership under section 32 of the U.S. Housing Act of 1937, 42 U.S.C. 1437z–4 (section 32), or former section 5(h) of the U.S. Housing Act of 1937 (42 U.S.C. 1437c(h) (1994) (former section 5(h)), HOPE I, or as otherwise approved by HUD, but excluding homeownership under Turnkey III, are automatically eligible to receive RHF grants for a 5-year period, subject to the criteria stated in paragraph (j)(4) of this section. The funding reductions attributable to homeownership apply in instances where the units proposed for homeownership under section 32, former section 5(h), HOPE I, or as otherwise approved by HUD have been in the public housing inventory for a minimum of 5 years.

(2) *When applied.* The RHF will be added, where applicable, for 5 years after the reduction of units described in paragraph (j)(1) of this section.

(3) *Computation of RHF.* The RHF consists of the difference between the CFF share without the CFF share reduction of units attributable to demolition, disposition, or sale for homeownership under section 32, former section 5(h), HOPE I or as otherwise approved by HUD and the CFF share that resulted after the reduction of units attributable to demolition, disposition, or sale for homeownership under section 32, former section 5(h), HOPE I, or as otherwise approved by HUD.

(4) *PHA eligibility for the RHF.* A PHA is eligible for this factor only if the PHA satisfies the following criteria:

(i) The PHA will automatically receive the RHF for reduction of units in accordance with (j)(1), unless the PHA rejects the RHF funding for that fiscal year in writing;

(ii) The PHA will use the funding in question for replacement housing, *i.e.,* development of public housing rental and/or homeownership units;

(iii) The PHA will use the restored funding that results from the use of the replacement factor to provide replacement housing in accordance with the PHA's CFP 5-Year Action Plan.

(iv) The PHA has not received funding for public housing units that will replace the lost units under Public Housing Development, and Major Reconstruction of Obsolete Public Housing, HOPE VI, or programs that otherwise provide for replacement with public housing units;

(v) The PHA, if designated troubled by HUD, and not already under the direction of HUD or an appointed receiver, in accordance with part 902 of this chapter, uses an Alternative Management Entity, as defined in part 902 of this chapter, for development of replacement housing and complies with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(vi) The PHA undertakes any development of replacement housing in accordance with applicable HUD requirements and regulations.

(5) *Failure to provide replacement housing in a timely fashion.*

(i) A PHA will be subject to the actions described in paragraph (j)(6)(ii) of this section if the PHA does not:

(A) Use the restored funding that results from the use of the RHF to provide replacement housing in a timely fashion as provided in paragraph (j)(6)(i) of this section and in accordance with applicable HUD requirements and regulations, and

(B) Make reasonable progress on such use of the funding, in accordance with applicable HUD requirements and regulations.

(ii) If a PHA fails to act as described in paragraph (j)(5)(i) of this section, HUD will require appropriate corrective action under these regulations, may recapture and reallocate the funds, or may take other appropriate action.

(6) *Requirement to obligate and expend RHF funds within specified period.*

(i) In addition to the requirements otherwise applicable to obligation and expenditure of funds, PHAs are required to obligate funds received as a result of the RHF within:

(A) 24 months from the date that funds become available to the PHA; or

(B) With specific HUD approval, 24 months from the date that the PHA accumulates adequate funds to undertake replacement housing.

(ii) To the extent the PHA has not obligated any funds provided as a result of the RHF within the time frames required by this paragraph, or expended such funds within a reasonable time frame, HUD shall reduce the amount of funds to be provided to the PHA.

(k) *Performance reward factor.*

(1) *High performer.* A PHA that is designated a high performer under the PHA's most recent final PHAS score may receive a performance bonus that is:

(i) 3 percent above its base formula amount in the first 5 years these awards are given (for any year in this 5-year period in which the performance reward is earned); or

(ii) 5 percent above its base formula amount in future years (for any year in which the performance reward is earned);

(2) *Condition.* The performance bonus is subject only to the condition that no PHA will lose more than 5 percent of its base formula amount as a result of the redistribution of funding from non-high performers to high performers.

(3) *Redistribution.* The total amount of Capital Funds that HUD has recaptured or not allocated to PHAs as a sanction for violation of expenditure and obligation requirements shall be allocated to the PHAs that are designated high performers under PHAS.

Subpart E—Use of Capital Funds for Financing [Reserved]

Subpart F—Development Requirements

§ 905.600 General.

(a) *Applicability.* This subpart F applies to the development of public housing units to be included under an ACC and receive Capital and/or Operating Funds. PHAs must comply with all of the requirements in this part, as applicable. Pursuant to § 905.106, when a PHA or owner/management entities and its partners submit and execute a development proposal and, if applicable, a site acquisition proposal,

and submit an executed ACC Amendment covering those same units, it is deemed to have certified by those executed submissions its past, current, and future compliance with this subpart. Noncompliance with any provision of this part or other applicable statutes or regulations, or the ACC, Amendment, and any Amendment thereto may subject the PHA and/or its partners to sanctions contained in § 905.804.

(b) *Description.* A PHA may develop public housing through the construction of new units or the acquisition of existing units that may or may not require rehabilitation prior to occupancy. As noted in paragraph (c) of this section, a PHA may use a variety of funding sources to develop public housing. When developing new public housing with Capital Funds, pursuant to 24 CFR 905.304, the term of the ACC Amendment will be 40 years. However, a PHA may develop a mixed-financed project with no public housing funds used for construction of the units and receive only Operating Fund assistance for an ACC term, as determined by HUD pursuant to section 9(e) of the 1937 Act (42 U.S.C. 1437(g)(e) and 24 CFR 905.604(k)).

(c) *Capital Fund Financing.* For Capital Fund Financing, only the general development process will be as follows:

(1) The PHA must include any public housing development in its CFP 5-Year Action Plan.

(2) After approval of the CFP 5-Year Action Plan by HUD, the PHA will contract for services necessary to develop the project.

(d) *All financing.* For all financing, the general development process will be as follows:

(1) The PHA or partner will locate properties and/or sites, prepare plans and specifications, and obtain HUD approval of the site acquisition and development proposals.

(2) Upon HUD approval of the development proposal, HUD and the PHA must execute the ACC Amendment and the PHA will enter the applicable project information into HUD's data systems. The PHA may request predevelopment funding necessary for preparation of the development proposal, as described in § 905.612(a).

(3) After HUD approval of the development and/or site acquisition proposals, the PHA and/or its partner will acquire sites and/or properties, and record the Declaration of Trust/ Declaration of Restrictive Covenants for all properties acquired. After HUD approval of the development proposal, the PHA and/or its partner will solicit construction bids, and award contracts and construct the units.

(4) Upon completion of the project, the PHA will establish the DOFA. After the DOFA, the PHA will submit a cost certificate to HUD attesting to the actual cost of the project that will be subject to audit.

(e) *Funding sources.* A PHA may engage in development activities using any one or a combination of the following sources of funding:

(1) Capital Funds;

(2) HOPE VI funds;

(3) Proceeds from the sale of units under a homeownership program in accordance with 24 CFR part 906;

(4) Proceeds resulting from the disposition of PHA-owned land or improvements;

(5) Private financing used in accordance with § 905.604, Mixed Financed Development;

(6) Capital Fund Financing Program (CFFP) proceeds under § 905.500;

(7) Operating Funds pursuant to an Operating Fund Financing Program (OFFP) approved by HUD pursuant to 24 CFR part 990; and

(8) Funds available from any other source.

§ 905.602 Program requirements.

(a) *Local cooperation.* Except as provided under § 905.604(d) for mixed-finance projects, the PHA must enter into a Cooperation Agreement with the applicable local governing body that includes sufficient authority to cover the public housing being developed under this subpart, or provide an opinion of counsel that the existing, amended, or supplementary cooperation agreement between the jurisdiction and the PHA includes the project or development.

(b) *New construction limitation.* These requirements apply to the construction of public housing and are not applicable to development of public housing through the acquisition of existing housing. All proposed new construction projects must meet both of the following requirements:

(1) *Limitation on the number of units.* A PHA may not use Capital Funds to pay for the construction cost of public housing units if such construction would result in a net increase in the number of public housing units that the PHA owned, assisted, or operated on October 1, 1999. A PHA may develop public housing units in excess of the limitation if:

(i) The units are available and affordable to eligible low-income families and the CF formula does not provide additional funding for the specific purpose of allowing construction and operation of such excess units; or

(ii) The units are part of a mixed-finance project or otherwise leverage significant additional investment, and the cost of the useful life of the projects is less than the estimated cost of providing tenant-based assistance under section 8(o) of the 1937 Act.

(2) *Limitations on cost.* A PHA may not construct public housing unless the cost of construction is less than the cost of acquisition or acquisition and rehabilitation of existing units, including the amount required to establish, as necessary, an upfront reserve for replacement accounts for major repairs. A PHA shall provide evidence of compliance with this subpart either by:

(i) Demonstrating through a cost comparison that the cost of new construction in the neighborhood where the PHA proposes to construct the housing is less than the cost of acquisition of existing housing with or without rehabilitation in the same neighborhood; or

(ii) Documenting that there is insufficient existing housing in the neighborhood to acquire.

(c) *Federalization.* Existing PHA-owned nonpublic housing properties financed with or without city or state funds may not be federalized, as described in section 9(n) of the 1937 Act (*see* 42 U.S.C. 1437g(n)), under a public housing CF ACC under this part, or by any other means.

(d) *Site and neighborhood standards.* Each proposed site to be newly acquired for a public housing project or for construction or rehabilitation of public housing must be reviewed and approved by the Field Office as meeting the following standards, as applicable:

(1) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed. Adequate utilities (*e.g.,* water, sewer, gas, and electricity) and streets shall be available to service the site.

(2) The site and neighborhood shall be suitable to facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued under these statutes.

(3) The site for new construction shall not be located in an area of minority concentration unless:

(i) There are sufficient, comparable opportunities outside the areas of minority concentration for housing minority families in the income range that are to be served by the proposed project; or

(ii) The project is necessary to meet overriding housing needs that cannot otherwise feasibly be met in that housing market area. "Overriding housing needs" shall not serve as the basis for determining that a site is acceptable if the only reason that these needs cannot otherwise feasibly be met is that, due to discrimination because of race, color, religion, creed, sex, disability, familial status, or national origin, sites outside areas of minority concentration are unavailable.

(4) The site for new construction shall not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to nonminority residents in the area.

(5) Notwithstanding the foregoing, after demolition of public housing units a PHA may construct public housing units on the original public housing site or in the same neighborhood if the number of replacement public housing units is significantly fewer than the number of units demolished. One of the following criteria must be satisfied:

(i) The number of public housing units being constructed is not more than 50 percent of the number of units in the original development; or

(ii) In the case of replacing an occupied development, the number of public housing units being constructed is the minimum number needed to house current residents that want to remain at the site, so long as the number of units is significantly fewer than the number being demolished; or

(iii) The public housing units being constructed constitute no more than 25 units.

(6) The site shall promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(7) The site shall be free from adverse environmental conditions, natural or manmade, such as: Toxic or contaminated soils and substances; mudslide or other unstable soil conditions; flooding; septic tank backups or other sewage hazards; harmful air pollution or excessive smoke or dust; excessive noise or vibration from vehicular traffic; insect, rodent or vermin infestation; or fire hazards. The neighborhood shall not be seriously detrimental to family life. It shall not be filled with substandard dwellings nor shall other undesirable elements predominate, unless there is a concerted program in progress to remedy the undesirable conditions.

(8) Through the use of public transportation, the site shall be accessible to social, recreational, educational, commercial, health facilities, health services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of similar unassisted standard housing.

(9) Through the use of public transportation, the site shall be accessible to a range of jobs for low-income workers and for other needs.

(10) The project may not be built on a site that has occupants unless the relocation requirements at § 905.308(b)(9) are met.

(11) The site shall not be in an area that HUD has identified as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the development is covered by flood insurance required by the Flood Disaster Protection Act of 1973 and meets all applicable HUD standards and local requirements.

§ 905.604 Mixed-finance development.

(a) *General.* A PHA may use a combination of private financing and/or other public funds and Capital Funds to develop public housing units. There are many potential scenarios for ownership and transaction structures, ranging from the PHA or its partner(s) holding no ownership interest, a partial ownership interest, or 100 percent of the ownership of public housing units that are to be developed.

(1) PHAs and/or their partner(s) may choose to enter into a partnership or other contractual arrangement with a third entity for the mixed-financed development and/or ownership of public housing units. If this entity has primary responsibility along with the PHA for the development of these units, it is referred to for purposes of this subpart as the PHA's "partner." The entity, other than the PHA itself that ultimately owns the public housing units, whether or not the PHA retains an ownership interest, is referred to as the "owner entity."

(2) The resulting "mixed-financed" developments may consist of 100 percent public housing units or may consist of public and nonpublic housing units. The term "mixed-finance development" applies to all projects developed by an owner entity regardless of whether there is a combination of private or other public sources. The term "mixed-finance modernization" applies to public housing projects modernized using the mixed-finance method. Projects developed by ownership entities that are modernized using the mixed-finance method shall maintain the DOFA that existed prior to mixed-finance modernization. Projects modernizing using the mixed-finance method shall have a covenant to maintain and operate the project as public housing pursuant to 24 CFR 905.304(a)(2). In addition, if a PHA decides to limit the term of the ACC by receiving Operating Fund or Capital Fund Only assistance, as described in § 905.600(b) and (c), it must follow the general development procedures discussed in this subpart.

(b) *Definitions applicable to this section*—(1) *Development.* A housing facility consisting of public housing units and that may also consist of nonpublic housing units, that has been developed, or that will be developed, using mixed-finance strategies under this subpart.

(2) *Mixed-finance.* The use of publicly and/or privately financed sources of funds for development under this subpart, owned by an owner entity of public housing units.

(3) *Owner entity.* The owner entity is the entity that will own the public units, if the PHA holds less than 100 percent of the ownership interest. The owner entity may be a partnership in which the PHA owns a partnership interest.

(4) *Participating party.* Any person, firm, corporation, or public or private entity that:

(i) Agrees to provide financial or other resources to carry out the approved proposal or specified activities in the proposal; or

(ii) Otherwise participates in the development and/or operation of the public housing units and will receive funds derived from HUD with respect to such participation. The term "participating party" includes an owner entity or partner.

(5) *Partner.* A third-party entity with which the PHA has entered into a partnership or other contractual arrangement to provide for the mixed-finance development of public housing units pursuant to this subpart. The Partner has primary responsibility with the PHA for the development and operation of public housing units under the terms of the approved proposal and in compliance with the applicable Public Housing Requirements.

(6) *PHA instrumentality.* An Instrumentality is an entity related to the PHA whose assets, operations, and management are legally and effectively controlled by the PHA, and through which PHA functions or policies are implemented, and which utilizes public housing funds or public housing assets for the purpose of carrying out public housing development functions of the PHA. For the Department's purposes, an Instrumentality assumes the role of the

PHA and is the PHA under the Public Housing Requirements for purposes of implementing public housing development activities and programs. Instrumentalities must be authorized to act for and to assume such responsibilities. In addition, an Instrumentality must abide by the Public Housing Requirements that would be applicable to the PHA.

(c) *Structure of projects.* Each mixed-finance project shall be developed in a manner that:

(1) Ensures the continued operation of public housing in accordance with all Public Housing Requirements; and

(2) Will bear the approximate same proportion to the total number of units in the mixed-financed project as the value of the total financial commitment provided by the PHA bears to the total financial commitment of the project, or shall not be less than the number of units that could have been developed under the conventional public housing program with the assistance, or as otherwise approved by the Secretary.

(d) *Process.* Development of a mixed-finance project under this subpart is similar to the development of public housing financed entirely with Capital Funds. PHAs will be expected to submit development and site acquisition proposals as identified in §§ 905.606 and 905.608. There are unique provisions applicable to mixed-finance projects that are further explained in this section.

(e) *Local cooperation.* A PHA may elect to exempt all public housing units in a mixed-finance project from provisions under section 6(d) of the Act and from the finding of need and cooperative agreement provisions under sections 5(e)(1)(ii) and (e)(2) of the Act, 42 U.S.C. 1437c(e)(1)(ii) and (e)(2), and instead subject units to local real estate taxes, but only if the development of the units is not inconsistent with the jurisdiction's comprehensive housing affordability strategy. If no election is made, the Cooperation Agreement as provided in 905.602(a) is required.

(f) *Conflicts.* In the event of a conflict between the requirements for a mixed-finance project and other requirements of this subpart, the mixed-finance public housing requirements shall apply, unless HUD determines otherwise in writing.

(g) *HUD approval.* For purposes of this section only, any action or approval that is required by HUD pursuant to the requirements set forth in this section shall be construed to mean HUD Headquarters, unless the Field Office is authorized in writing by Headquarters to carry out a specific function in this section.

(h) *Irrevocable financial commitment.* Irrevocability of funds means that binding legal documents, such as loan agreements, mortgages/deeds of trust, partnership agreements or operating agreements or similar documents committing funds have been executed by the applicable parties, though disbursement of such funds may be subject to meeting progress milestones, the absence of default, and other commercially reasonable conditions precedent under such documents. For projects involving revolving loan funds, the irrevocability of funds means that funds in an amount identified to HUD as the maximum revolving loan have been committed pursuant to legally binding documents, though disbursement of such funds may be subject to meeting progress milestones, the absence of default, and other commercially reasonable conditions precedent under such documents. The PHA must ensure the availability of the participating party or parties' financing, the amount and source of financing committed to the proposal by the participating party or parties, and the irrevocability of those funds.

(1) To ensure the irrevocable nature of the committed funds, the PHA shall: Review the legal documents committing such funds to ensure that the progress milestones and conditions precedent contained in such contracts are commercially reasonable, as commonly accepted by the industry; that the PHA and/or its ownership entity are ready, willing, and able to attain such milestones and comply with such preconditions; and confirm, after conducting sufficient due diligence, that such documents are properly executed by persons or entities legally authorized to bind the entity committing such funds.

(2) The PHA is not required to ensure the availability of funds by enforcing documents to which it is not a party.

(3) The PHA may certify as to the irrevocability of funds through the submission of an opinion of the PHA's counsel attesting that counsel has examined the availability of the participating party or parties' financing, and the amount and source of financing committed to the proposal by the participating party or parties, and has determined that such financing has been irrevocably committed by the participating party or parties for use in carrying out the proposal, and that such commitment is in the amount required under the terms of the proposal.

(i) *Comparability.* Public housing units built in a mixed-financed development must be comparable in size, location, external appearance, and distribution to nonpublic housing units within the development.

(j) *Mixed-finance procurement.* The requirements of 24 CFR part 85 and 24 CFR 905.316 are applicable to this subpart with the following exceptions:

(1) PHA may select a development partner using competitive proposals procedures for qualifications-based procurement, subject to negotiation of fair and reasonable compensation, and compliance with TDC and other applicable cost limitations;

(2) An owner entity (which, as a private entity, would normally not be subject to 24 CFR part 85) shall be required to comply with 24 CFR part 85 if HUD determines that the PHA or PHA Instrumentality or either of their members or employees exercises significant decision-making functions within the owner entity with respect to managing the development of the proposed units. HUD may, on a case-by-case basis, exempt such an owner entity from the need to comply with 24 CFR part 85 if it determines that the owner entity has developed an acceptable alternative procurement plan.

(k) *Operating Fund and Capital Fund only assistance.* (1) General. PHAs and their partners may develop public housing without the use of Capital Funds but for which the PHA agrees to provide only Operating Fund assistance. These Operating Fund-only newly developed units will be included in the calculation of the Capital Fund formula in § 905.400. Where the PHA elects in the future to use Capital Funds for modernization of Operating Fund only units, the PHA must sign an ACC Amendment with a 20-year use restriction and record a Declaration of Trust in accordance with § 905.304. In addition, PHAs and their partners may develop public housing without the use of Operating Funds but for which the HUD and the PHA agree to provide only Capital Fund assistance for the development of new units, or, annually, in the future, for modernization and capital improvements, and the PHA must sign an ACC Amendment with a 40-year use restriction for development of new units and a 20-year use restriction for modernization and capital improvements and record a Declaration of Trust in accordance with § 905.304.

(2) ACC Term and Formula. (i) The term of the mixed-finance ACC amendment will be determined based on the assistance as provided in § 905.304. For units constructed with the benefit of public housing capital assistance, there shall be no disposition of the public housing units without the prior written approval of HUD during a 40-year period and the public housing

units shall be maintained and operated in accordance with all applicable Public Housing Requirements (including the ACC), as required by section 9(d)(3) of the Act, 42 U.S.C. 1437g(d)(3), as those requirements may be amended from time to time. For Operating Fund only units, there shall be no disposition of the public housing units without the prior written approval of HUD during, and for 10 years after the end of, the period in which the public housing units receive operating subsidy from the PHA, as required by 42 U.S.C. 1437g(e)(3), as those requirements may be amended from time to time. For units modernized with Capital Funds, the PHA would have to execute an ACC Amendment providing for no disposition of the public housing units without the prior written approval of HUD during a 20-year period, and the public housing units shall be maintained and operated in accordance with all applicable Public Housing Requirements (including the ACC), as required by 42 U.S.C. 1437g(d)(3), as those requirements may be amended from time to time.

(ii) If the PHA is no longer able to provide Operating Fund assistance, the PHA (on behalf of the owner entity) may request to terminate the CF ACC early. Where the ACC is terminated early, the PHA must provide the resident with a decent, safe, sanitary, and affordable unit to which he or she can relocate, which may include a public housing unit in another development or a Housing Choice Voucher, and pay for the tenant's reasonable moving costs. The URA is not applicable in this situation.

(3) Procedures. PHAs and their partners will develop Operating Fund only or Capital Fund only projects in accordance with this part by submitting development proposals, site acquisition proposals, and closing documents, except that the development proposals submitted, pursuant to § 905.606, need only address § 905.606(a), (b) (c), (j), (k), and (l). Upon HUD approval of the development proposal and closing documents, the PHA and HUD will execute a Mixed-Finance Amendment to the ACC for Operating Fund only or Capital Fund only assistance projects.

(l) [Reserved]

(m) [Reserved]

(n) *Mixed-finance operations—Deviation from HUD requirements pursuant to section 35 (h) of the 1937 Act.*

(1) An entity that develops, owns, and operates a mixed-finance development in which 20 percent or more of the units are for the rental of nonpublic housing may include a provision in the agreement that it may deviate from the requirements of the Mixed-Finance ACC and applicable public housing regulations regarding rents and income eligibility, as provided in paragraph (n)(2) of this section, only when there is a reduction in appropriations under section 9(e) of the 1937 Act (see 42 U.S.C. 1437g(e)), or any other change in law preventing the PHA from providing Operating Funds as provided in its contractual agreement with the entity.

(2) *Allowable deviations.* The agreement may provide for deviations from Public Housing Requirements as follows:

(i) Increased public housing tenant rents, to the extent necessary to preserve the viability of units.

(ii) The owner entity rents vacant public housing units to persons who earn more than 80 percent of the adjusted median income (AMI) or to persons who are paying more than 30 percent adjusted income for rent.

(iii) If an owner determines that the amount of income being generated after renting the vacant public housing units is still insufficient to cover the projected shortfall in operating subsidies and if the owner has expended all operating subsidy reserve funds put aside for such eventuality, the owner may give written notice to the public housing residents that the owner intends to increase the rent being charged for the unit. In this case, the owner may increase the amount of the public housing rent above the amount established under section 3 of the Act, 42 U.S.C. 1437a, but any increased rental charges must be strictly limited to the amount needed to meet the projected shortfall in operating subsidies.

(iv) If, after notifying public housing residents of a proposed rent increase under § 905.604(n)(2)(iii) of this section, the resident is unable to remain in the unit because the new rent is more than 40 percent of the tenant's income, the PHA must provide the resident with a decent, safe, sanitary, and affordable unit to which he or she can relocate, which may include a public housing unit in another development or a Housing Choice Voucher, and pay for the tenant's reasonable moving costs. The URA is not applicable in this situation. Pending the tenant's relocation to another unit, the owner may not evict the tenant for nonpayment of rent if the reason for the eviction is the resident's inability to pay the incremental increase in rent under § 905.604(n)(2)(iii) of this section.

(v) The owner must have included in each of its leases with public housing residents in the mixed-finance development a disclosure that the residents may be required to pay a higher rent for the unit, or to relocate to another unit, and specific conditions under which a higher rent might be charged; that is, a change in subsidy under section 9 of the Act, 42 U.S.C. 1437g, or other applicable law.

(3) *Alternative management plan.* If the agreement between the PHA and the entity contains a provision permitting a deviation from the Public Housing Requirements pursuant to section 35(h) of the 1937 Act and this part, the alternative management plan between the PHA and the entity must be approved by HUD before the implementation of such plan. The plan must contain the following:

(i) A statement describing the owner's reasons for invoking the alternative management plan (and, if the plan is being invoked because of changes in applicable law(s), a statement as to how the statutory changes will materially affect the viability of the public housing units);

(ii) An explanation of the owner's proposed remedies including, but not limited to:

(A) How the owner will select the residents (including a statement of their income levels) and units to be affected by the proposed remedies;

(B) The number and income levels of the families proposed to be admitted to those public housing units;

(C) The owner's timetable for implementing the proposed remedies in the alternative management plan;

(iii) An amended agreement between the Owner and PHA that includes provisions ensuring that:

(A) The alternative management plan is reevaluated and approved annually by HUD to ensure that implementation of the remedies continues to be appropriate;

(B) The owner complies with the requirements of this part in its management and operation of the public housing units following the invocation of remedies;

(C) The owner returns to the PHA any income that is generated by the public housing units in excess of the owner's expenses on behalf of those units, as a result of its invocation of remedies;

(D) The owner reinstates all Public Housing Requirements (including rent and income eligibility requirements) with respect to the original number of public housing units and number of bedrooms, in the mixed-finance development following the PHA's reinstatement of operating subsidies at the level originally agreed to in the regulatory and operating agreement; and

(E) The owner provides written notice to each of the public housing residents

in the mixed-finance development of its intention to invoke remedies under a submitted alternative management plan. Such notice must comply with all relevant federal, state, and local substantive and procedural requirements and, at a minimum, must provide public housing residents with 90 days advance notice of any proposal to increase rents or to relocate public housing residents to alternative housing.

(iv) Additional evidence. The PHA must provide documentation that:

(A) The revenues being generated by the public housing units (in combination with the reduced allocation of operating subsidy) are inadequate to cover the reasonable and necessary operating expenses of the public housing units;

(B) The deficit in operating revenues is attributable solely to the reduction in operating subsidy for the public housing units;

(C) A demonstration that the PHA cannot meet its contractual obligation;

(D) The reduction in appropriations under section 9 of the 1937 Act or other changes in applicable law materially affects the viability of the public housing units; and

(E) The owner has attempted to offset the impact of reduced operating subsidies, or changes in applicable law, by expending more than 50 percent of the funds from any operating reserve that may have been established on behalf of the public housing units.

(4) *HUD review.* HUD will review the alternative management plan to ensure that the plan meets the requirements of this subpart, and that any proposed deviation from standard Public Housing Requirements will be implemented only to the extent necessary to preserve the viability of the public housing units, while maintaining the low-income character of the units to the maximum extent practicable. HUD will complete its review of the alternative management plan and provide a decision within 30 days of its receipt. HUD may disapprove a PHA's request, made on behalf of the owner, to invoke or continue remedies under the alternative management plan for any of the following reasons:

(i) That the circumstances upon which the owner's request to invoke remedies under the plan are premised do not qualify in accordance with section 35(h) of the Act (42 U.S.C. 1437z–7(h)), as determined by HUD, or that the original circumstances that triggered the remedies no longer continue to apply;

(ii) In HUD's sole discretion, the owner's proposed deviation(s) from standard Public Housing Requirements are not limited to the maximum extent practicable to preserving the viability of the public housing units and maintaining the low-income character of those units;

(iii) HUD has factual information available to it that contradicts the PHA's and/or the owner's assertions that each of the required preconditions for invoking remedies has been satisfied; or

(iv) HUD has evidence that the proposed alternative management plan is not in compliance with the civil rights laws, including the requirement to affirmatively further fair housing.

(5) *HUD reevaluation and reapproval.* HUD reevaluation and reapproval of the alternative management plan is required annually once an owner has invoked remedies under an alternative management plan, in order to ensure that the circumstances originally triggering the need for such remedies, as well as the scope of the remedies, remain valid and appropriate.

§ 905.606 Development proposal.

(a) In order to develop any public housing, including mixed-finance public housing for rental occupancy, the PHA shall submit a development proposal, in the form prescribed by HUD. The development proposal shall include some or all of the following documentation, as deemed necessary by HUD. Failure to submit and obtain HUD approval may result in the Capital Funds used in conjunction with the project being deemed to be ineligible expenses. In determining the amount of information to be submitted by the PHA, HUD shall consider whether the documentation is required for HUD to carry out mandatory statutory, regulatory, or Executive Order reviews; the quality of the PHA's past performance in implementing development projects under this part; and the PHA's demonstrated administrative capability.

(b) *Project description.* A description of the proposed project, including the proposed development method (*e.g.,* mixed-finance, new construction, acquisition); the household type (*e.g.,* family, elderly); number and type of units (with bedroom breakout and count) of public and nonpublic housing units, if applicable; the method of completing construction, including the extent to which the PHA shall use force account labor and use of procured contractors; schematic drawings of the proposed building and unit plans; and the types and size of nondwelling space to be provided. For new construction projects, the PHA must include determinations required under § 905.602. If the project involves the acquisition of existing properties less than 2 years old, the PHA must include an attestation from the PHA and owner that the property was not constructed with the intent that it would be sold to the PHA or that the property was constructed in compliance with all applicable requirements (*e.g.,* Davis-Bacon wage rates, accessibility, etc.).

(c) *Site information.* An identification and description of the proposed site, site plan, and neighborhood, and a neighborhood map shall be contained in the development proposal and must meet the site and neighborhood standards required under § 905.602(d).

(d) *Participant description.* Identification of participating parties and a description of the activities to be undertaken by each of the participating parties and the PHA; and legal and business relationships between the PHA and each of the participating parties, as applicable.

(e) *Development project schedule.* A schedule for the development project that includes each major stage of development through and including the submission of an Actual Development Cost Certificate to HUD.

(f) *Accessibility.* A PHA must provide sufficient information for HUD to determine that dwelling units and other public housing facilities meet accessibility requirements specified at § 905.312, including, but not limited to, the number, location, and bedroom size distribution of UFAS-accessible dwelling units.

(g) *Project costs.*

(1) *Budgets.* The PHA shall submit a budget in the form prescribed by HUD reflecting the total cost from all sources based on the schematic drawings, outline specifications, and construction cost estimate. For mixed-financed projects, the PHA shall submit a budget for the construction period, a draw schedule identifying the timing of construction financing contributions from all sources, and a separate budget showing the permanent financing in the project

(2) *TDC comparison.* A calculation of the TDC subject to § 905.314.

(3) *Financing.* A PHA must submit a detailed description of all financing necessary for the implementation of the project, specifying the sources. In addition, HUD may require all documents relating to the financing (*e.g.,* loan agreements, notes, etc.) and establishment of project reserves.

(4) *Safe harbor standards.* HUD will review the project terms when receiving development proposals, budgets, and/or other documents that contain negotiated terms. In order to expedite the mixed-finance review process and control costs, HUD may make available safe

harbor and maximum fee ranges for a number of costs. If a project is at or below a safe harbor standard, no further review will be required by HUD. If a project is above a safe harbor standard, additional review by HUD will be necessary. In order to approve terms above the safe harbor, the PHA must demonstrate to HUD in writing that the negotiated terms are appropriate for the level of risk involved in the project, the scope of work, any specific circumstances of the development, and the local or national market for the services provided.

(h) *Operating pro-forma/Operating Fund methodology.* Projects shall submit a 10-year operating pro-forma including all assumptions to assure that operating expenses do not exceed operating income. For mixed-finance development, the PHA must describe its methodology for providing and distributing operating subsidy to the owner entity for the public housing units.

(i) *Local cooperation agreement.* Documentation regarding local cooperation agreement in accordance with 905.602(a) or 905.604(e) for mixed-finance transactions.

(j) *Environmental requirements.* All activities under this part are subject to an environmental review by a responsible entity under HUD's environmental regulations at 24 CFR part 58 and must comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and the related laws and authorities listed at 24 CFR 58.5. HUD may make a finding in accordance with § 58.11 of this title and may perform the environmental review itself under the provisions of 24 CFR part 50. In those cases where HUD performs the environmental review under 24 CFR part 50, it will do so before approving a proposed project, and will comply with the requirements of NEPA and the related requirements at 24 CFR 50.4.

(k) *Relocation.* Information concerning any displacement of the site occupants, including identification of each person displaced, the distribution plan for notices, and anticipated cost and source of funding for relocation assistance in accordance with § 905.308 (b)(9). If displacement is due to a HUD-approved demolition or disposition of existing public housing, no submission will be required, since relocation was required to be addressed prior to demolition/disposition HUD approval.

(l) *Market analysis.* For a mixed-finance development that includes nonpublic housing units, the PHA must include an analysis of the projected market for the proposed project.

(m) *Program income and fees.* HUD will require the PHA to disclose information on program income and fees the PHA or its affiliate or instrumentality receives.

(n) *Additional HUD-requested information.* PHAs are required to provide any additional information that HUD may need to determine whether it can approve the proposal.

§ 905.608 Site or property acquisition proposal.

(a) When a PHA determines that it is necessary to acquire land or property using the Capital Fund for the development of public housing prior to approval of the Development Proposal, the PHA shall submit a site/property acquisition proposal to HUD for review and approval in accordance with 24 CFR 905.610. If site or property will be purchased at closing, then the items stated in paragraphs (e) and (f) of this section need to be included in the development proposal. The acquisition of a site or property for additional public housing is subject to requirements contained in § 905.308(b)(9). The site acquisition proposal shall include the following:

(b) *Justification.* A justification for acquiring property prior to Development Proposal submission.

(c) *Description.* A description of the property (*i.e.,* proposed site or project) to be acquired.

(d) *Project description; site and neighborhood standards.* An identification and description of the proposed project, site plan, and neighborhood, together with information sufficient to enable HUD to determine that the proposed site meets the site and neighborhood standards at § 905.602(d).

(e) *Zoning.* Documentation that the proposed project is permitted by current zoning ordinances or regulations or evidence to indicate that needed rezoning is likely and will not delay the project.

(f) *Appraisal.* Documentation attesting that an appraisal of the proposed property by an independent, state-certified appraiser has been conducted and that the acquisition is in compliance with § 905.308(b)(9). The purchase price of the site/property may not exceed the appraised value without HUD approval.

(g) *Schedule.* A schedule of the activities to be carried out by the PHA.

(h) *Environmental assessment.* An environmental review or request for HUD to perform the environmental review pursuant to § 905.308(b)(2).

(i) *Relocation.* Information concerning any displacement of the site occupants, including identification of each person displaced, the distribution plan for notices, and anticipated cost and source of funding for relocation assistance in accordance with § 905.308(b)(9). If displacement is due to a HUD-approved demolition or disposition of existing public housing, no submission will be required since relocation was required to be addressed prior to HUD approval of the demolition or disposition.

§ 905.610 Technical processing.

(a) *Review.* HUD shall review all development proposals and site/property acquisition proposals for compliance with the statutory, Executive Order, and regulatory requirements applicable to the development of public housing. In addition, HUD shall conduct any necessary statutory and Executive Order reviews with respect to each proposal. For mixed-finance proposals, HUD's review will evaluate whether the proposed sources and uses of funds are eligible and reasonable, and whether the financing and other documentation establish to HUD's satisfaction that the development is viable and structured so as to adequately protect the federal investment of funds in the development. For this purpose, HUD will consider the PHA's proposed methodology for allocating operating subsidies on behalf of the public housing units, the projected revenue to be generated by any nonpublic housing units in a mixed-finance development, and the 10-year operating pro-forma and other information contained in the proposal. If public housing development funds are to be used to pay for more than the pro rata cost of common area improvements, HUD will evaluate the proposal to ensure that:

(1) On a per-unit basis (taking into consideration the number of public housing units for which funds have been reserved) the PHA will not exceed TDC limits; and

(2) Common area improvements will benefit the residents of the development in a mixed-finance project.

(b) *Approval.* If HUD determines that a proposal is approvable, upon approval of the Request for Release of Funds and the environmental certification submitted in accordance with 24 CFR part 58, HUD shall notify the PHA in writing of its approval. The HUD approval will include the CF ACC for signature and return by the PHA for execution by HUD. Until HUD approves a proposal, a PHA may only draw down funds for costs for materials and services related to proposal preparation

and predevelopment costs approved by HUD.

(c) *Amendments to approved development proposals.* The PHA shall amend any approved development proposal to which a material change is made. HUD's review and approval is required for all amendments to approved development proposals. HUD defines a material change as:

(1) A change in the number of units;

(2) A change in the number of bedrooms by an increase/decrease of more than 10 percent;

(3) A change in cost or financing by an increase/decrease of more than 10 percent;

(4) A change in the site; or

(5) A schedule change that results in a PHA's failure to meet obligation and expenditure deadlines.

§ 905.612 Disbursement of capital funds—predevelopment costs.

(a) *Predevelopment Costs.* After inclusion of a new development project in the HUD-approved CFP 5-Year Action Plan and the development has been entered into applicable HUD data systems, the PHA may request funding for predevelopment expenses. Failure to request and obtain HUD approval for predevelopment assistance may result in the costs associated with the new project being deemed ineligible costs. Predevelopment funds may be approved by HUD in accordance with the following requirements:

(1) Predevelopment assistance may be used to pay for materials and services related to proposal development and may also be used to pay for costs related to the demolition of units on a proposed site or for preliminary development work.

(2) For non-mixed-finance projects, predevelopment funding up to 5 percent does not require HUD approval. HUD shall determine on a case-by-case basis that a higher amount that may be drawn down by a PHA to pay for necessary and reasonable preliminary development costs, based upon a consideration of the nature and scope of activities proposed to be carried out by the PHA. For mixed-finance projects, all funding for predevelopment must be reviewed and approved by HUD.

(3) Before a request for predevelopment assistance may be approved, the PHA must provide to HUD information and documentation specified in §§ 905.606 and 905.608 as HUD deems appropriate.

(4) The requirements in § 905.612(b) to disburse funds for mixed-finance projects in an approved ratio to other public and private housing do not apply to disbursement of predevelopment funds.

(b) *Standard drawdown requirements.*

(1) *General.* If HUD determines that the proposed development is approvable, it may execute with the PHA a CF ACC Amendment, or mixed-finance amendment to the CF ACC, as applicable, to provide funds for the purposes, and in the amounts approved by HUD. Upon approval of the development proposal and all necessary documentation evidencing and implementing the development plan, the PHA may disburse amounts as are necessary and consistent with the approved development and site acquisition proposal without further HUD approval, unless HUD determines that such approval is necessary. Once HUD approves the acquisition plan, the PHA may request funds for acquisition activities. Each Capital Fund disbursement from HUD is deemed to be an attestation of compliance by the PHA with the requirements of this part, as prescribed in § 905.106. If HUD determines that the PHA is in noncompliance with any provision of this part, the PHA may be subject to the sanctions in subpart H, § 905.800 of this part.

(2) *Mixed-finance projects.* Upon HUD approval of final, fully executed and, where appropriate, recorded closing documents submitted pursuant to § 905.604(l), the PHA may disburse funds from HUD only in an approved ratio to other public and private funds, in accordance with a disbursement schedule prepared by the PHA and approved by HUD. The ratio applies to the overall project and not to each drawdown. The PHA will release funds to its partner consistent with § 905.316.

Subpart G—Other Security Interests

§ 905.700 Other security interests.

(a) The PHA may not pledge, mortgage, enter into a transaction that provides recourse to public housing assets, or otherwise grant a security interest in any public housing project, portion thereof, or other property of the PHA without written approval of HUD.

(b) The PHA shall submit the request in the form and manner prescribed by HUD.

(c) HUD shall consider:

(1) The ability of the PHA to complete the financing, the improvements, and repay the financing;

(2) The reasonableness of the provisions in the proposal; or

(3) Any other factors HUD deems appropriate.

Subpart H—Compliance, HUD Review, Penalties, and Sanctions

§ 905.800 Compliance.

As provided in § 905.106, PHAs or other owner/management entities and their partners are required to comply with all applicable provisions of this part. Execution of the CF ACC Amendment received from the PHA, submissions required by this part, and disbursement of Capital Fund grants from HUD are individually and collectively deemed to be the PHA's certification that it is in compliance with the provisions of this part and all other Public Housing Program Requirements. Noncompliance with any provision of this part or other applicable requirements may subject the PHA and/or its partners to sanctions contained in § 905.804.

§ 905.802 HUD review of PHA performance.

(a) *HUD Determination.* HUD shall review the PHA's performance in completing work in accordance with this part at least annually. HUD may make such other reviews when and as it determines necessary. When conducting such a review, HUD shall, at minimum, make the following determinations:

(1) HUD shall determine whether the PHA has carried out its activities under this part in a timely manner and in accordance with its CFP 5-Year Action Plan and other applicable requirements.

(2) HUD shall determine whether the PHA has a continuing capacity to carry out its Capital Fund activities in a timely manner.

(3) HUD shall determine whether the PHA has accurately reported its obligation and expenditures in a timely manner.

(4) HUD shall determine whether the PHA has accurately reported required building and unit data for the calculation of the formula.

(5) HUD shall determine whether the PHA has obtained approval for any CFFP or OFFP proposal and any PHA development proposal.

(b) [Reserved]

§ 905.804 Sanctions.

(a) If at any time, HUD finds that a PHA has failed to comply substantially with any provision of this part, HUD may impose one or a combination of sanctions, as it determines is necessary. Sanctions associated with failure to obligate or expend in a timely manner are specified at § 905.306. Other possible sanctions for noncompliance by the PHA that HUD may impose include, but are not limited to the following:

(1) Issue a corrective action order at any time by notifying the PHA of the specific program requirements that the PHA has violated, and specifying that any of the corrective actions listed in this section must be taken. Any corrective action ordered by HUD shall become a condition of the CF ACC.

(2) Reimburse from non-HUD sources.

(3) Limit, withhold, reduce, or terminate Capital Fund or Operating Fund assistance.

(4) Issue a Limited Denial of Participation or Debar responsible PHA officials pursuant to 24 CFR part 24, subpart J.

(5) Withhold assistance to the PHA under section 8 of the Act, 42 U.S.C. 1437f.

(6) Declare a breach of the CF ACC with respect to some or all of the PHA's functions.

(7) Take any other corrective action or sanction, as HUD deems necessary.

(b) *Right to Appeal.* Before taking any action described in paragraph (a) of this section, HUD shall notify the PHA and provide an opportunity, within a prescribed period of time, to present any arguments or additional facts and data concerning the proposed action to the Assistant Secretary for Public and Indian Housing

PART 941—[REMOVED]

4. Remove part 941, consisting of §§ 941.101–941.616.

PART 968—[REMOVED]

5. Remove part 968, consisting of §§ 968.101–968.435.

PART 969—[REMOVED]

6. Remove part 969, consisting of §§ 969.101–969.107.

Dated: December 23, 2010.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2011–2303 Filed 2–4–11; 8:45 am]

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Part III

Department of Health and Human Services

Food and Drug Administration

Information Related to Risks and Benefits of Powdered Gloves; Request for Comments; Draft Guidance for Industry and Food and Drug Administration Staff; Recommended Warning for Surgeon's Gloves and Patient Examination Gloves That Use Powder; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0027]

Information Related to Risks and Benefits of Powdered Gloves; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the establishment of a public docket to receive comments related to surgeon's gloves and patient examination gloves (medical gloves) that contain or use donning or dusting powder. FDA is interested in the potential health effects from the use of powder on medical gloves and is soliciting comments regarding risks and benefits of powdered gloves. FDA is interested in any potential benefits of powdered gloves so that the Agency can consider how best to address the risks in light of any benefits. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability for a draft guidance document entitled "Recommended Warning for Surgeon's Gloves and Patient Examination Gloves That Use Powder." The draft guidance document provides a recommended warning statement for powdered glove labeling that will inform health care providers and consumers of the risks associated with glove powder.

DATES: The Agency encourages interested parties to submit information and comments by April 25, 2011.

ADDRESSES: Submit electronic comments or information to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Paul Gadiock, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4432, Silver Spring, MD 20993, 301–796–5736, e-mail: *paul.gadiock@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA has received two citizen petitions (FDA–2008–P–0531–001 and FDA–2009–P–0117–001) requesting that FDA ban powder on surgeon's gloves and patient examination gloves under the authority granted to FDA by section 516 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360f). In their submissions to FDA, the petitioners highlight the adverse health effects that can result from powdered glove use, including allergic reactions, irritation, and foreign body reactions resulting in inflammation, granulomas, and adhesions of peritoneal tissue after surgery, as well as glove powder's ability to serve as a carrier of endotoxin.

FDA has considered this information and believes the petitions have raised legitimate concerns about the use of powdered gloves. However, FDA's regulatory approach to powdered gloves must consider the risks of these gloves in light of any benefits. For example, if powdered gloves offer unique benefits in performing certain procedures, FDA should consider such benefits in determining how the risks of powdered gloves should be addressed. To assist the FDA in developing its regulatory approach, the Agency is seeking public input regarding the risks and benefits of powdered gloves to determine whether such gloves present an unreasonable and substantial risk of illness or injury. FDA is interested in comments on both the risks and the benefits of powdered gloves; however, because the risks associated with powdered glove use have been extensively discussed in the citizen petitions, FDA is particularly interested in whether there are any potential benefits that powdered gloves may offer. Comments related to the benefits of powdered glove use should also discuss whether those benefits are available when using nonpowdered gloves. FDA plans to use this information when considering how to address the risks in light of any known benefits.

Although FDA is still examining the potential risks and benefits of powdered medical gloves, in the interim the Agency believes the risks that have been identified support a recommended labeling statement advising health care providers and consumers of the risks presented by glove powder.

Therefore, elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability for a draft guidance document entitled "Recommended Warning for Surgeon's Gloves and Patient Examination Gloves That Use Powder." The draft guidance document provides a recommended warning statement for powdered glove labeling that will inform health care providers and consumers of the risks associated with glove powder.

The guidance document, when finalized, will help to address the risks associated with powdered medical gloves while FDA determines if additional measures, such as a ban, are necessary.

II. Submission of Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. References

The following references have been placed on display in the Division of Dockets Management (*see* **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Barbara, J., M. C. Santais, D. A. Levy, *et al.,* "Immunoadjuvant Properties of Glove Cornstarch Powder in Latex-Induced Hypersensitivity," *Clinical & Experimental Allergy,* vol. 33, pp. 106–112, 2003.

2. Malinger, G., S. Ginath, L. Zeidel, *et al.,* "Starch Peritonitis Outbreak After Introduction of a New Brand of Starch Powdered Latex Gloves," *Acta Obstetricia et Gynecologica Scandinavica,* vol. 79, pp. 610–611, 2000.

3. Odum, B. C., J. S. O'Keefe, W. Lara, *et al.,* "Influence of Absorbable Dusting Powders on Wound Infection," *Journal of Emergency Medicine,* vol. 16(6), pp. 875–879, 1998.

4. Stratmeyer, M., "Medical Glove Powder Report," (*http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm113316.htm*), September 1997.

Dated: February 1, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

[FR Doc. 2011–2542 Filed 2–4–11; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0030]

Draft Guidance for Industry and Food and Drug Administration Staff; Recommended Warning for Surgeon's Gloves and Patient Examination Gloves That Use Powder; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Recommended Warning for Surgeon's Gloves and Patient Examination Gloves that Use Powder." This draft guidance document provides a recommended warning statement related to medical gloves that contain powder or use donning or dusting powder, specifically surgeon's gloves and patient examination gloves (medical gloves that use powder). FDA is concerned about the potential adverse health effects from the use of powder on medical gloves and is recommending that the labeling for powdered medical gloves provide a warning related to the potential health effects. This draft guidance is not final nor is it in effect at this time. Elsewhere in this issue of the **Federal Register**, FDA is announcing the establishment of a public docket to receive comments related to surgeon's gloves and patient examination gloves that contain or use donning or dusting powder.

DATES: Although you can comment on any guidance at any time (*see* 21 CFR 10.115 (g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by May 9, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Recommended Warning for Surgeon's Gloves and Patient Examination Gloves That Use Powder" to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 4613, Silver Spring, MD 20993. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–847–8149. *See* the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the draft guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Subhas Malghan, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 62, rm. 3204, Silver Spring, MD 20993–0002, 301–796–2548, *Subhas.malghan@fda.hhs.gov*; or Sheila Murphey, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 2510, Silver Spring, MD 20993–0002, 301–796–6302, *Sheila.murphey@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Medical gloves are a significant factor in the protection of both patients and health care personnel in the United States. Health care personnel rely on medical gloves as a barrier against transmission of infectious diseases and contaminants when conducting surgery as well as in more limited interactions with patients.

Following the recognition of acquired immunodeficiency syndrome (AIDS) as a major public health concern and recommendations from the Centers for Disease Control and Prevention that health care workers use appropriate barrier precautions to prevent exposure to the human immunodeficiency virus (HIV), FDA recognized the need for greater assurance that cross-contamination between patients and health care workers be prevented. In the **Federal Register** of January 13, 1989 (54 FR 1602), FDA revoked the exemption for patient examination gloves from certain current good manufacturing practice requirements in order to assure that manufacturers provide an acceptable manufacturing quality level. FDA similarly revoked the exemption from premarket notification requirements for patient examination gloves.

On December 12, 1990 (55 FR 51254), FDA published regulations describing certain circumstances under which surgeon's and patient examination gloves would be considered adulterated. The regulations established the sampling plans and test methods for glove leakage defects that the Agency would use to determine whether gloves were adulterated. (*See* 21 CFR 800.20). Subsequently, FDA initiated inspections of glove manufacturers to assure conformance with the acceptable quality levels identified in the regulation.

In 1997, FDA issued the "Medical Glove Powder Report" discussing the potential adverse health effects of medical glove powder, along with alternatives and current market information available at that time. Adverse health events reviewed by the Medical Glove Powder Report included: (1) Aerosolized powder on natural rubber latex (NRL) gloves carrying allergenic proteins as a cause of respiratory allergic reactions; (2) rhinitis, conjunctivitis, and dyspnea; (3) respiratory problems; (4) granuloma formation; and (5) peritoneal adhesions.

FDA is issuing this draft guidance with a recommended warning statement for powdered medical gloves. The statement should inform users of the potential adverse health effects from these devices, including foreign body reaction, formation of granulomas, and peritoneal adhesion especially with multiple surgeries. The warning should also include information on increases in respiratory ailments, and development of irritant dermatitis or Type IV allergy when glove powder is used on NRL gloves. In addition, the warning should state that powder used on NRL medical gloves can serve as a carrier for airborne allergenic natural rubber latex proteins.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized will represent the Agency's current thinking on "Recommended Warning for Surgeon's Gloves and Patient Examination Gloves that Use Powder." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used, but should address the identified risks inherent to powdered gloves.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov*. To receive "Recommended Warning for Surgeon's Gloves and Patient Examination Gloves that Use Powder," you may either send an e-mail request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send

a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1704 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 801 have been approved under OMB control number 0910–0485. In addition, FDA concludes that the labeling statement in section 4 of the guidance does not constitute a "collection of information" under the PRA. Rather, this labeling statement is "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public." (5 CFR 1320.3(c)(2)).

V. Comments

Interested persons may submit to the Division of Dockets Management (*see* **ADDRESSES**), either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: February 1, 2011.

Nancy K. Stade,

Deputy Director for Policy, Center for Devices and Radiological Health.

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H.R. 366/P.L. 112-1
To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Jan. 31, 2011)

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